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A  
COMMENTARY  
ON THE  
**U. P. TENANCY ACT,**  
**XVII OF 1939**

BY

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Vade Mecum, Leading Cases on Hindu  
Law, The U. P. Land Revenue Act,  
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Allahabad

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BY

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' Advocate, High Court, Allahabad

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## P R E F A C E

This commentary on the United Provinces Tenancy Act was written by the late Dr. M. L. Agarwala, whose works on the Rent and Revenue Law of these Provinces have always been looked upon as most authoritative. He prepared the manuscript while the Act was before the Legislature, but before he could give it the final shape in the light of the Act as eventually passed his sad demise intervened and stopped his hand. Thereafter the publishers to whom the manuscript had already been delivered entrusted to me the work of editing the book and re-shaping it in accordance with the form of the Act in which it ultimately emerged. It also became my duty to revise the manuscript thoroughly in the light of later judicial pronouncements and to incorporate the recent amendments. At the same time I have taken special pains to see that the references to judicial decisions are given correctly and in a systematic form. I have also endeavoured to make the book complete by adding a number of appendices which will prove helpful in elucidating or supplementing the provisions of the Act.

The Provincial Government and the Board of Revenue have, in virtue of the power conferred on them, framed rules to give effect to the various sections of the Act. These have been reproduced in Appendices A and B respectively or, where given in the body of the book itself along with the commentary of the sections concerned, have been referred to in those appendices. The Board of Revenue also issues rules and instructions for the guidance of courts and regulating their procedure embodied in the Revenue Court Manual. Some of these concerning important matters relating to the Act have been reproduced in appendix C.

In the matter of court-fees the Act in several places simply refers to the provisions of the Court-Fees Act. Therefore certain relevant provisions of that Act have also been given in Appendix E (1).

## Preface

The Tenancy Act has excluded from its operation certain areas of the Kumaun Division to which the Kumaun Tenancy Rules of 1918, are applicable. We have, therefore, given those rules also in Appendix F.

It may be noted that there are certain rights and liabilities attaching to land which depend on custom and not on the Tenancy Act, for instance, the right of tenants to have a residence. Such rights and liabilities have been dealt with in Appendix G.

For the sake of convenience to the lawyer who may have to refer to the earlier Acts a comprehensive comparative table giving corresponding sections of the United Provinces Tenancy Act, the Agra Tenancy Act of 1926 and the Oudh Rent Act of 1886 has been given in the very beginning.

As regards the commentary itself it is needless to say that all efforts have been made to make the provisions of law contained in the Act as lucid and clear as possible. Care has also been taken to review the earlier law and give a comparative study wherever necessary or useful. At places history of the law has also been given and almost everywhere the corresponding provisions, if any, of the repealed Acts, both of Agra and Oudh, have been indicated.

The case law has been brought upto date and in citing judicial decisions we have not confined ourselves to the tribunals of these provinces alone, but have, on certain points about which the provisions of law are similar in other provinces, made reference to decisions of their tribunals as well. And where possible Privy Council or English decisions have also been cited.

But however clear the commentator may like to be, he sometimes comes across certain problems which present special difficulties, for instance, of ambiguities, conflict of decisions, absence of express pronouncements or even anomalies and absurdities. In the course of the commentary when such situations have arisen we have not avoided or shirked them but have dealt with them, clearly showing the position as it stands and giving our own humble opinion.

After all a commentary on any subject of law must speak for itself. If it is of any assistance to the Bench in its arduous task of

## Preface

administering justice and if it affords any guidance to the Bar whose primary responsibility is to help the courts in directing dispensation of justice in accordance with the provisions of law enunciated by the legislature or pronounced by the higher judicial tribunals, the commentator is amply paid for his labour. But this is not all that the aim of his efforts embraces. He also owes a duty to the public. He is expected to place in their hands a work which will enable them to understand their rights and liabilities under a particular branch of law, to form correct opinions about legal positions and to live the life of law-abiding citizens.

Ours is mainly an agricultural country and the law relating to agricultural land must, of necessity, be a most important branch of law affecting the life of its people. That is why the law of tenancy assumes so much importance and engages the attention of the legislature so often and so intensely.

In the United Provinces of Agra and Oudh there used to be two principal systems of tenancy law, one for the Agra Province and the other for Oudh, leaving aside the system of law prevailing in Kumaun. Now, however, these two systems have been combined into one and the United Provinces Tenancy Act has taken the place of the Agra Tenancy Act and the Oudh Rent Act.

A commentary on the United Provinces Tenancy Act which justifies its name does not, therefore, stand in need of an apology. And if it proves to be of any use to the judge, the lawyer, the litigant or other members of the public, the commentator is very well rewarded.

In the end I must thank all my friends who have generously helped me in the preparation of the book, particularly Mr. Beni Prasad Agarwala, Advocate, who ungrudgingly supplied me whatever books I required and Mr. Kedar Nath Gupta, Advocate, whose library was as much at my disposal as my own.

CIVIL LINES, ALLAHABAD.  
23rd November, 1941.

*Rama Shankar Prasad.*





## LIST OF ABBREVIATIONS.

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(A).	decision of the Allahabad High Court.
Agra.	Agra High Court Reports.
All.	Allahabad Series.
A. I. R.	All India Reporter. A. I. R. is cited by the year throughout.
A. L. J.	Allahabad Law Journal Reports.
A. L. R.	Allahabad Law Reporter.
A. W. N.	Allahabad Weekly Notes.
A. W. R.	Allahabad Weekly Reporter.
B. L. R.	Bengal Law Reports.
Sup Vol.	Supplementary Volume.
Bom.	Bombay Series.
B. R.	Selected Decisions of the Board of Revenue (United Provinces).
(B. R.)	Board of Revenue decision.
Cal.	Calcutta Series.
(C. C.)	decision of the Oudh Chief Court.
C. L. J.	Calcutta Law Journal.
C. W. N.	Calcutta Weekly Notes.
<i>et seq.</i>	and following pages.
(F. B.)	decision of a Full Bench.
Hay.	Hay's Reports.
(H. C.)	High Court decision.
I. C. or Ind. Ca.	Indian Cases.
I. L. R.	Indian Law Reports. I. L. R. is usually cited by the number of volume. The volumes of the last few years are, however, cited by the year like the A. I. R. In such cases where the reference is to the A. I. R. the letters A. I. R. are given. In the case of reference to I. L. R. the letters I. L. R. are not usually given and only the number of the volume or the year is given.
L. R. or Leg. Rem.	} Legal Remembrancer, Rent and Revenue Series.
L. R. H. C. or Leg. Rem. (H. C.)	

## List of Abbreviations

L. R. Rev.	Law Reporter, Allahabad Section, Revenue.
Luck.	Lucknow Series.
Lah.	Lahore Series.
Mad.	Madras Series.
Mad. (H. C.)	Madras High Court Reports.
Marsh	Marshall's Reports.
Moo. I. A. or M. I. A.	} Moore's Indian Appeals.
N. W.	
N.-W. P.	N.-W. P. High Court Reports
O C.	Oudh Cases.
O. W. N.	Oudh Weekly Notes.
Pat.	Patna Series.
(P. C.)	decision of the Privy Council
P L. J.	Patna Law Journal.
P. L. W. or Pat. L. W.	} Patna Law Weekly.
P. L. T.	
P. R.	Patna Law Times.
P. W. R.	Punjab Reporter.
R. C.	Punjab Weekly Reporter.
R. D.	Revenue Cases, published at Allahabad.
Rev. L. J.	Revenue Decisions.
Rev. & Cr. L. J.	Revenue Law Journal, published at Lucknow.
	Revenue and Criminal Law Journal, published at Aligarh, by M. L. Varma.
R. R.	Revenue Reports.
S. C.	Select Cases, Oudh.
S. D.	Selected Decision of the Board of Revenue.
Taunt.	Taunton's Reports, Common Pleas.
U. D.	Unpublished decisions of the Board of Revenue, published by Vishun Nath.
U. P. L. R.	United Provinces Law Reports.
W. R.	Sutherland's Weekly Reporter.

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## CORRESPONDENCE TABLE.

This table indicates the correspondence of sections of the United Provinces Tenancy Act, XVII of 1939, the Agra Tenancy Act, III of 1926 and the Oudh Rent Act, XXII of 1886. There are three main columns, showing respectively the sections of the Acts of 1939, 1926 and 1886. Each main column is subdivided into two columns. The first sub-column in each case gives serially the sections of the Act concerned, omitting those which have no corresponding sections in either of the other two Acts. The corresponding sections of the other Act or Acts are given in the line of every section either in the first sub-column or the second sub-column. The second sub-column in each case gives those corresponding sections which do not come in serial order like those in the first sub-column.

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# THE UNITED PROVINCES TENANCY ACT, 1939.

## Act No. XVII of 1939.

(As amended upto-date)

[*Passed by the United Provinces Legislative Assembly, on 24th April, 1939, and by the United Provinces Legislative Council, on 16th September, 1939, with certain amendments which were agreed to by the United Provinces Legislative Assembly, on 4th October, 1939, and received the assent of the Governor, on 6th December, 1939, under section 75 of the Government of India Act, 1935.*]

WHEREAS it is expedient to consolidate and amend the law relating to agricultural tenancies and other matters connected therewith in Agra and Oudh ; It is hereby enacted as follows :

**Preamble.**—This unifies the law of tenancy in the two provinces, and as sub-section (2) of section 1 shows repeals the Agra Tenancy Act, 1926, and the Oudh Rent Act, 1886.

The preamble indicates in general terms the object and intention of the Legislature in passing an Act. It may be referred to in cases of ambiguity . . . But the preamble is merely a key to the construction of a statute and it cannot control its substantive provisions, which may be found to extend beyond the limits of the preamble."<sup>1</sup>

**Consolidate and amend.**—According to the accepted rules of interpretation, these words confine the law of tenancy to that laid down in the Act, so far as the sections of the Act go.

Besides this, the essence of a Code is to be exhaustive as to the matters it deals with <sup>2</sup>

## CHAPTER I.

### PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the United Provinces Tenancy Act, 1939.

(2) It extends to the whole of the United Provinces except the areas specified in the First Schedule, the Jaunsar-Bawar Pargana of the Dehra Dun district and the portion of the Mirzapur district south of the Kaimur range :

Provided that the Provincial Government may, by notification in the official *Gazette*, extend the whole or any part of this Act to the whole or any portion of the area specified

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<sup>1</sup> *Gurjanandan v. Hanuman Das*, 49 All. 25 (F. B.)=1927 All. 1=1926 A. L. J. R. 921.

<sup>2</sup> *Hukum Chand v. Kamalu Nand*, 23 Cal. 927 ; *Gomti v. Gudri*, 25 All 141.



in the First Schedule subject to such modification, if any, as it thinks fit :

Provided further that when this Act or any portion of it is extended to the whole or any portion of the area specified in the First Schedule with or without modification so much of any Act or Regulation in force therein as is inconsistent with this Act or the portion so extended or with any modification made therein, shall be deemed to have been repealed thereby :

Provided further that no provision of this Act which is inconsistent with the provisions of the pargana of Kaswar Raja Act, 1915, shall apply to the pargana of Kaswar Raja in the district of Benares.

(3) It shall come into force on such date as the Provincial Government may, by notification in the official *Gazette*, appoint in this behalf.

1. Since the Act extends to lands in the whole of the United Provinces, except those mentioned in the First Schedule, and those specified in sub-section (2) of this section, lands in Cantonments<sup>1</sup> are within the Act, unless some express provision excludes them, as section 30(3)(b) does. No hereditary rights will arise in such land. Under section 17 of the Agra Act of 1926, occupancy rights could be conferred by a landholder in respect of such land. The last paragraph of section 5 of the Oudh Act preserved the effect of an agreement made between a landlord and tenant, and under such agreement an ordinary right of occupancy, as distinct from the right of occupancy contemplated by section 5 of that Act, could be conferred on a tenant<sup>2</sup> and if it referred to land in Cantonment, such right could be conferred in such land.

The Agra Tenancy Act, 1901, did not apply to lands in Cantonments and hence occupancy rights could not be acquired therein by prescription.<sup>3</sup> A person in occupation of such land on 7th September, 1926, did not, by force of section 19 of the Act, or Schedule D of the Oudh Act, become a statutory tenant, and if he be in occupation on the date on which the present Act comes into force, he is excluded from being a hereditary tenant by section 30(3)(b). He will, therefore, be a mere non-occupancy tenant.

<sup>1</sup> *Jagrup Singh v. Har Narain*, XI U. D. 25=10 L. R. Rev. 326 ; *Cantonment Board v. Kishan Lal*, 57 All. 1 (F. B.)=1934 A. L. J. 409=1934 A. I. R. All. 609=149 I. J. 636=18 R. D. 275=XV U. D. H. C. 105=15 L. R. Rev. 326

Rulings to the contrary such as *Secretary of State v. Mulla*, V U. D. H. C. 10=1922 R. C. 420=66 I. C. 582 are not considered good law.

<sup>2</sup> *Jung Bahadur v. Rae Raja*, 7 O. C. 265

<sup>3</sup> *Jagrup Singh v. Har Narain*, XI U. D. 25, following *Rup Narain v. Jagrup Singh*, 8 L. R. Rev. 194=1927 R. C. 210.

2. Land of another province added to the United Provinces, *e. g.*, by fluvial action or transfer by Government Order becomes subject to the Act from the moment of addition,<sup>1</sup> and its occupant, if he had no higher status in the original provinces, will become a hereditary tenant. *Qu.*—Whether he will retain his higher status, if any?

3. Lands of these provinces detached from them become free from the operation of the Act.<sup>2</sup>

4. **Except the areas, etc**—Sub-section (2) may be conveniently divided into two parts, *viz.*, (a) areas specified in the First Schedule as areas to which the Act does not apply, in the first instance, and (b) Jaunsar Bawar Pargana and portion of the Mirzapur District, South of the Kaimur range. An Act of the Provincial Legislature does not extend to any. The two areas mentioned in (b) above are partially excluded areas within section 92 of the Government of India Act, 1935, unless the Governor by public notification otherwise directs. The Provincial Government may, however, with or without modification, extend the whole or any part of the Act to the areas in (a), *i. e.*, the areas specified in Schedule I as areas to which the Act does not apply. The earlier Tanancy Acts did not apply to Jaunsar Bawar. The following gives a short history as to the areas in the Mirzapur District.

The Act (No. XVIII) of 1873 excepted the tappas of Aghori Khas and South Kon in the pargana of Aghori, the tappa of British Singrauli in the pargana of Singrauli, and the tappas of Phulwa, Dudhi and Barha in the pargana of Bichipur from its operation. The Act of 1881 did not save these tappas from its operation.

Notification No. 2650-A of 14th November, 1874, had extended the whole of the Act XVIII of 1873, to the Mirzapur district lying south of the Kaimur range, except the Dudhi Khas estate. This notification continued in force under the Act of 1881 and was rescinded on 16th July, 1904, by notification No. 1226—11731, which extended the Act of 1901, to the portion lying south of that range, except the tappas of Dudhi, Phulwa, Barha and Gurda of the Dudhi pargana.

5. **Extension of the Act.**—The Provincial Government cannot now extend the Act to Jaunsar Bawar and the portion of the Mirzapur district lying south of the Kaimur range.

6. **Pargana of Kaswar Raja Act, 1915.**—Section 4 defines a record of rights as one prepared under section 10(1) of the Pargana of Kaswar Raja Act, 1911.

According to a prevalent custom, *sir* is capable of being exchanged between the owners of two different mahals without loss of *sir* rights. In any case, a tenant of *sir* land has no ground for

<sup>1</sup> *Beni Prasad Kuari v. Baran Rai*, B. R. 6 of 1904.

<sup>2</sup> *Beni Prasad Kuari v. Batulan Bibi*, 23 All. 283.

complaint when he is recorded a *shikmi* from the date of the tenancy.<sup>1</sup>

An under-proprietor is defined in sub-section (3) of section 4.

A fixed-rate tenant and a pre-settlement occupancy tenant are tenants who have been recorded as fixed-rate tenant or as occupancy tenant (as the case may be) in the record of rights, or have been held by a decision in judicial proceedings instituted before, or within three months after, the commencement of the Act, to have had, previous to the 10th of November, 1911, such rights as would have entitled them, except for error or omission, to be so recorded; and include the successor in interest of such tenant.

An ex-proprietary tenant is defined in somewhat the same way in section 10 of the Agra Tenancy Act, 1901 and section 26 of this Act.

A fixed-rate tenant is subject to all the provisions, so far as they are consistent with the Act of 1915, of the Agra Tenancy Act, 1901, applicable to such tenant. Section 9 of Act 11 of 1901 (present section 24) was held to be a rule of evidence and not to embody a provision to which a fixed-rate tenant could be said to be subject within the meaning of section 6 of the Kaswar Raja Act.<sup>2</sup> A pre-settlement occupancy tenant has the same rights and liabilities as a fixed-rate tenant except that his rent may be enhanced or abated as provided in the Agra Tenancy Act, 1901, for occupancy tenants. Both tenants are free from section 57, clauses (a), (b) and (c), of the Act of 1901. Their rights may be sold in execution of a decree for arrears of rent and such sale shall be free from all incumbrances. If the landholder is the purchaser at such sale, he may have the sale cancelled by certifying payment or adjustment of the decree within three months of the sale. On such certificate being filed, the tenant if ejected, is restored to possession and remains as if he had never been ejected; and any tenant put in by the landholder after the sale becomes his sub-tenant with an option of giving up the land at once.

A grove-holder becomes a pre-settlement occupancy tenant on the grove being cut-down and the land being brought under cultivation. The rent of such tenant is, on a dispute arising, to be fixed by an Assistant Collector of the first class.

The Chapter of the Tenancy Act, 1901, relating to rent-free grants did not apply to rent-free grants recorded in the record of rights, except where the land was so recorded as held rent-free for service or in lieu of wages.

<sup>1</sup> *Jurera Singh v. Panch Koshi Singh*, XII U. D. 32.

<sup>2</sup> *Adit Narain Singh v. Mahabir Prasad*, VIII U. D. H. C. 140=1927 R. C. 131=1927 All. 581; (Letters Patent Appeal) 1930 A. I. R. All. 398=14 R. D. 365 [the definition in section 8 (now 12) was held to be applicable.]

In the Bhadohi pargana of the family domains of the Maharaja of Benares, occupancy rights can be acquired by 20 years' occupation of land other than the Maharaja's *sir* held without a written lease<sup>1</sup>

7. **Commencement of the Act.**—The first of January, 1940, has been fixed by the Provincial Government, as the date of the commencement of this Act

2. (1) The Agra Tenancy Act, 1926, is hereby repealed  
 except in respect of the areas to which this  
 Act does not apply.

Repeal.

(2) The Oudh Rent Act, 1886, is hereby repealed.

1. **Repeal.**—The Agra Tenancy Act, 1926, is not repealed by this Act in respect of the areas to which this Act does not apply. The Act does not apply to the areas specified in Schedule I, and to the partially excluded areas of Jaunsar Bawar and the portion of the Mirzapur district south of the Kaimur range. The Act of 1926, did not extend to the Jaunsar Bawar area. How far the portion of the Mirzapur district was affected is disclosed by note 4 at page 3.

The Oudh Rent Act is repealed altogether.

2. The consequences of repeal are mentioned in section 6, United Provinces General Clauses Act as follows:—Unless a different intention appears, the repealing Act shall not (a) revive anything not in force or existing at the time when the repeal takes effect; or (b) affect the previous operation of the repealed enactment or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired or accrued or incurred under the repealed Act; or (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed Act; or (e) affect any remedy, or any investigation in any legal proceedings commenced before the repealing Act shall have come into operation in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.

*Revive* implies the existence of something before the commencement of the repealed Act which was made defunct by that Act; and does not connote anything entirely new or anything which was not affected or destroyed by the repealed Act. For instance, rights in respect of groves and grovelands were not affected or destroyed by the Act of 1901, and except for the chapter on groves and grovelands in the Act of 1926, or this Act, would not have been

<sup>1</sup> *Ram Pershad v. Maharaja of Benares*, 1 L. R. 146, *The Maharaja of Benares v. Ram Das*, 1 L. R. 152.

affected by it. A remedy or right denied by the repealed Act or which became time-barred while that Act was in force, at the commencement of this Act, cannot be revived although the bar of time would not have arisen under the new Act. For instance, the period of limitation for a suit for ejectment on the ground of illegal transfer or subletting was one year under the Act of 1901; under the Act of 1926 as well as under the new Act no period of limitation is prescribed for such a suit. Hence if the period of one year had expired on or before 6th September, 1926, the illegal transfer stood;<sup>1</sup> but if even one day out of the year was left on that date, the transfer could be challenged.

Where a right of suit accrued while Act II of 1901 was in force and had not become time-barred thereunder, a suit could be brought within the limitation, if any, provided by the Act of 1926, and, if there was no limitation, at any time.<sup>2</sup>

The proposition on which this rule is based that a rule of limitation is a rule of procedure is true so far as suits in the same class of courts are concerned, in this case, in the revenue courts. Where, however, at the time of the accrual of the cause of action the suit lay in a civil court and the law of limitation as prescribed in the Limitation Act was applicable, that law will continue to apply.

The Act cannot by implication curtail a period of limitation applicable to a suit or proceeding based on a cause of action which accrued before the commencement of this Act. For instance section 79 of Act II of 1901 did not apply to a rent-free grantee, and the latter could sue the zamindar within 12 years to recover possession of which he had been deprived by the zamindar. Section 99 of the Act of 1926, applied to rent-free grantees and a suit by the latter to recover possession could be brought within 6 months, under the Act of 1926, and may be brought now within three years. Hence if his dis-possession took place before 7th September, 1926, the grantee may sue for recovery of possession within 12 years<sup>3</sup>. See also the cases cited below under the heading *Forum*.

Now section 188 applies to rent-free grantees.

The Patna court has held that where an Amending Act shortens the period of limitation fixed by the original Act, the starting period remaining the same in both, but is brought into force on a future date, all suits affected by the change must be brought

<sup>1</sup> *Anand Sarup v. Harbans*, IX U. D. 56=9 L. R. Rev. 152

<sup>2</sup> *Sukhbasi Lal v. Brij Basi Lal*, X U. D. 99; *Jagan Nath v. Totu*, 11 L. R. Rev. 4=XI U. D. 30; *Panna Lal v. Habibul Rahman*, 11 L. R. Rev. 348=XII U. D. 152; *Krishna Chandra v. Kunj Behari Lal*, 11 L. R. Rev. 339=XII U. D. 148; *Anand Sarup v. Har Buns*, IX U. D. 56=9 L. R. Rev. 152. See also *Gokul Prasad v. Walidad Khan*, XI U. D. 119.

<sup>3</sup> *Jas Ram v. Pem Singh*, 10 L. R. Rev. 250

before the date when the Amending Act is brought into operation<sup>1</sup> *sed quere*.

The matter will be of importance in Oudh. By the Oudh Act, limitation was prescribed by sections 129 to 134 and section 145. Section 129 fixed one year as the limitation for all suits under the Act, except those for which different periods of limitation were prescribed. The starting point was the accrual of the cause of action. Now, the expression "cause of action" does not occur in the penultimate columns of Schedule IV. Specific acts or events are mentioned as starting points. Under section 130, a suit for a patta or counterpart could be brought at any time during the tenancy. Now the corresponding section 55(4) has no period of limitation, and a suit must be brought, if at all, during the period of the tenancy. Hence there is no real change under section 130-A. A suit to set aside a notice of relinquishment could be brought within 30 days of the receipt or service of the notice to relinquish. Now the period is 15 days from the same starting point.

Section 131 prescribed three months for a suit to recover possession of a holding which had been treated by the landlord as abandoned, from the date when the landlord entered upon the holding. Now the suit will fall under section 188 with the limitation of three years from the date of wrongful dispossession (Under the Agra Act of 1926 the period was six months from the same starting point). Hence though the starting point is practically the same, the period of limitation has been altered from three (or, in Agra, six) months to three years.

Under section 132, a suit for recovery of an arrear of (a) revenue or (b) rent or (c) the money equivalent of rent, where the rent was payable in kind, or (d) of a share of profits, (except when the person from whom such revenue or rent was due deposited it under the provisions of sections 14, 15) could be brought within three years from the last day of the month of Jeth of the Fasli year in which the arrear fell due. Now sections 224, 225, 226 and 228 provide for suits for recovery of arrears of revenue. The limitation is three years in each case, but the starting points are different. See Schedule IV, Group A, for the recovery of arrears of rent. Sections 142 and 146 give the remedy for suits to be brought within three years from the date when the arrears become due, and sections 160 and 169 give the remedy by application to be filed within the periods mentioned there. Sections 230 and 231 prescribe suits for recovery of shares of profits to be brought within three years from the date when the shares of profits become due. The limitation for all these suits and applications under the Agra Act of 1926 was three years from the dates or events mentioned above.

Hence, as now except in a case under section 132, we had three years for the recovery of such arrears, but the starting points of

<sup>1</sup> *Reyasat v. Gopi Nath*, 20 P. L. T. 38—1939 A. I. R. Pat. 122—18 Pat. 1.

limitation were different from what they are now. Under section 133-A a suit for ejectment of a tenant on the ground that a decree for arrears of rent against the tenant had remained unsatisfied for 15 days or upwards could be instituted at any time so long as the plaintiff was entitled to apply for the execution of the decree for arrears on the basis of which the suit had been brought. Now sections 167 and 169 supply the remedy in such a case by way of an application to be filed within three years from the date of the decree or the final decree in the case, (*i. e.*, for arrears). (In Agra, the same rule existed under the Act of 1926). Hence both the period of limitation and the starting points and the remedy are altered.

A suit to set aside an award in respect of a decision, estimate, appraisement or proceeding under section 32 of the Oudh Act, had to be brought within three months of the accrual of the cause of action. Under the Agra Act, 1926, section 138, like section 31 of the Oudh Act, provided for an application for the deputation of an officer to make division, estimate or appraisement of produce or crops, there being no limitation for it, and section 139, like section 32 of the Oudh Act provided for the appointment of such an officer and for proceedings taken by or before him and for his award. Now sections 142 and 143 in effect reproduce sections 138 and 139 of the Agra Act, and item No 4 of Group C provides for an application to have an officer deputed. There is no express provision of a suit to set aside the officer's award or proceeding.

Now, one is in a position to see where the limitation of one year from date of the accrual of the cause of action prescribed by section 129 of the Oudh Act applied. It applied to all the suits not mentioned above under section 130, etc. For instance, it applied to claims for arrears of *bardari* dues,<sup>1</sup> or for recovery of possession under section 108(10), or section 188.<sup>2</sup>

Sections 129 to 134 of the Oudh Act, applied only to suits and to applications. Hence section 129 did not apply to an application to eject under section 61 of the Oudh Act.<sup>3</sup> These sections applied to suits under the Oudh Rent Act, and not to suits under other Acts, *e. g.*, Order 21, Rules 100 to 103 of the Civil Procedure Code.<sup>4</sup>

An important question may arise as to the starting points of limitation in cases where the cause of action or right to sue accrued before the commencement of the Act. Will it be the starting point mentioned in the repealed Act, or the starting point mentioned in

<sup>1</sup> *Ram Sarup v Uma Nath Bikash Singh*, XVII U. D. H. C. 117

<sup>2</sup> *Sheo Shankar Lal v Sheo Prasad*, II U. D. 217; *Sarjoo Prasad v Salik*, IV U. D. 400, *Chhangoo v Abdul Ghanu*, B. R. 3 of 1901; *Nageshar v Ram Tahal*, I U. D. 238, *Pitam Singh v. Dabi Prasad*, I U. D. 135

<sup>3</sup> *Ratan Lal v. Nand Ram*, XI U. D. 144.

<sup>4</sup> *Thakur Baksh Singh v. Abhaidat Singh*, 1935 Oudh 462—XVI U. D. 433.

the repealing Act? Where the starting point mentioned in this Act will actually and in effect shorten the time within which a suit could be brought under the repealed Act, and such shortened time will have expired before the date on which this Act comes into force, there is not the least doubt that the repealed Act will govern the suit. Suppose, however, that such time expires on the day or the day after this Act commences. Either the repealed Act will apply, or section 253 may be called in aid. See the matter further discussed *infra* under the heading *forum*.

In considering the point of limitation one must not lose sight of the Government of India Act, 1935. The law of limitation is a subject as to which both the Federal and the Provincial legislatures may engage themselves. But the validity of any provision made in or by a Provincial Act will be tested by section 107 of that Act. That section renders invalid provision of a Provincial law which is repugnant to any existing Indian Law, (*i. e.*, any law, passed before the first of April, 1937, by any competent legislature in British India), unless the Provincial Bill passed by the Provincial legislature was reserved by the Governor thereof for the consideration of the Governor-General or by the latter also for the signification of His Majesty's pleasure and has received the assent of the higher authority; and if this assent has been obtained, no Bill or amendment for making any provision repugnant to such provincial law can be introduced in either Chamber of the Federal legislature without the previous sanction of the Governor-General.

3. **Any right, etc.**—The three words *right*, *privilege* and *remedy*, do not cover the same set of ideas. The word *right* is obviously used in the sense of a primary right of the language of jurisprudence. A *remedy* is the secondary right given or recognised by law to a person having a primary right to get redress for or to prevent its infringement. For instance, the right of a tenant to hold or occupy his tenancy land during the term of his tenancy is a primary right. When a landholder disturbs or threatens to disturb this right of the tenant, the latter's secondary right to get redress by a suit under section 183 or 59 comes into play. A *remedy* is therefore a right of suit or other legal proceeding to obtain adequate relief for the infringement or threatened infringement of a primary right.

A *privilege* is a right, immunity, benefit or advantage enjoyed by a person beyond the common advantages of other individuals; the enjoyment of some desirable right, or an exemption from some evil or burden. In Oudh, there were privileged tenants. In the Province of Agra, section 49 of the Act of 1926, created a privilege in favour of certain classes of tenants in the matter of rent. Now that section is no more in the Act. This, however, will not derogate from any privilege already in existence at the date of the commencement of this Act.

A secondary right may be split up into three parts, *viz.*, (*a*) the right to bring a suit or take other legal proceedings, (*b*) the relief (the two constituting the remedy of an aggrieved person), and (*c*) the procedure



and other parts of adjective law pertinent to the matter. What clauses (c) and (e) of section 6 of the General Clauses Act protect are the substantive or primary rights, and (a) and (b) of the secondary rights, but not (c), i. e., procedure and other parts of adjective law. See note 5 *infra*.

A question whether a proceeding in a revenue court should be started by application or by a suit on a cause of action accruing before the commencement of the Act, is clearly one of procedure. Where land ceased to be grove before 7th September, 1926, (date of coming into operation of the Act of 1926) the provisions of section 197 (a) of that Act applied to a proceeding started after that date to eject the holder, that is, by a notice under section 86 and not by a suit under section 44 of that Act as the occupier became a non-occupancy tenant when the land ceased to be groveland.<sup>1</sup>

Legal proceeding for enhancement of rent under section 43 (a) of the Act of 1901 was commenced in 1925, and the status of the tenant was determined in 1930. It was held to be governed by the Act of 1901 and not by the Act of 1926, and an enhancement at prevailing rates should be made.<sup>2</sup>

The present Act does not mention some suits and applications that were mentioned in the Oudh Rent Act. *E.g.*

- (1) suits under section 133 and section 108(5) of the Oudh Act for recovery of money in the hands of an agent, or for the settlement of account and delivery of papers by the agent. This class of suits will now be governed by the ordinary civil law ;
- (2) suits for ejectment mentioned in section 108(4) of the Oudh Act except those mentioned in sections 171, 172, and 179 of the present Act. In any event some of the subject-matter of such suits are dealt with by applications *e.g.*, under sections 163, 169 and 175 of the present Act ;
- (3) suit to set aside an award in respect of a decision, estimate, appraisement, or proceeding under section 32 of the Oudh Act. Now an application lies under section 143 of the present Act. See *ante* at page 8 ;
- (4) suit for contesting a notice of enhancement under section 43 of the Oudh Act ;
- (5) suit to contest a notice of ejectment under section 54 of the Oudh Act. Now, when a non-occupancy tenant appears to show cause on a notice of ejectment, the matter is sent to the proper officer for trial and decision ;

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<sup>1</sup> *Damru v. Sheo Narain*, B. R. I of 1931=XII U. D. B. R. 5. See also *Jhabba Lal v. Chandi*, 2 A. L. J. 644; *Muhammad Ibrahim v. Bhagwan*, B. R. 3 of 1903.

<sup>2</sup> *Safdar Husain v. Syed Nazim*, 12 L. R. Rev. 351=XIII U. D. 36.

- (6) suit by cosharers against *lambardars*, or by proprietors or lessees against *muafidars* or assignees of revenue, for compensation on account of exaction in excess of revenue or rent, or on account of the withholding of a receipt for payment of revenue or rent, mentioned in section 108(17) of the Oudh Act.

*Forum*.—Whether a question of *forum* is one of substantive law or of procedure has been the subject of some decisions. In *Ram Karan Singh v. Ram Das Singh*<sup>1</sup> where one of the questions was whether a cause of action for a declaratory suit between co-tenants having arisen before 7th September 1926, when the proper *forum* for a suit on that cause of action was a civil court, the revenue court had jurisdiction to entertain the suit filed after 7th September, 1926, because Act III of 1926, placed such a suit within the exclusive cognizance of such court. Sulaiman. A. C. J., held that questions of *forum* and of limitation were questions of procedure or adjective law, and therefore Act III of 1926 applied. Three judges held that section 99 of that Act was not retrospective and did not lay down any rule of procedure, and the fifth judge though dubitant agreed with this view. The majority therefore held that a civil suit could be brought under Act II of 1901.

The view of the majority had also been taken in *Abdul Hakim v. Mokarram Ali*<sup>2</sup> (dispossession from a grove before 7th September 1926), *Jas Ram v. Pem Singh*<sup>3</sup> (dispossession of a rent-free grantee before 7th September, 1926). In *Bunni Pandey v. Brahmdeo*,<sup>4</sup> (suit between co-tenants for declaration of right and possession of a share in a holding), Sulaiman. A. C. J. and Smith, J., held that the new Act applied to the suit brought after 7th September, 1926, although the cause of action had arisen before. This case was before the Full Bench case reported in 1931 A. L. J. 1018. The same remarks apply to *Hazari Tiwari v. Maktula*.<sup>5</sup>

The Full Bench decision holds the field and its practical effect is that the right to prosecute a suit or enforce a right in the *forum* prescribed by the repealed enactment, is not one of adjective law, i. e., it is a right or privilege or remedy, within the meaning of section 6, General Clauses Act. It must be remembered that by changing the *forum* a repealing Act may practically destroy a remedy or right existing under the repealed Act, e. g., by so shortening the period of limitation that a suit on a pre-existing cause of action would, if brought in the new *forum* after the passing of the new Act, be time-barred. Two classes of cases must be noticed under this head,

<sup>1</sup> 1931 A. L. J., 1018—1931 A. I. R. All. 635.

<sup>2</sup> 1929 A. L. J. 1157—1930 A. I. R. All. 158.

<sup>3</sup> 10 L. R. Rev. 250.

<sup>4</sup> 1931 A. L. J. 852—XII U. D. II. C. 182.

<sup>5</sup> 1931 A. L. J. 844—1932 A. I. R. All. 30—143 I. C. 450.

*viz.*, (1) where the shorter period of limitation provided by the repealing Act had already expired on the date of its coming into operation, and (2) where it had not done so, and a suit could be brought within the new period of limitation even after the coming into operation of the repealing Act. In case (1), the right or remedy itself would be destroyed and the Act would become retrospective. Hence in such cases, the Full Bench view seems to be just and equitable and therefore correct. In such cases, the question is not so much of *forum* as of *right*. In case (2), the repealing Act does not affect any right or remedy; and specially in the case of the Tenancy Act, 1926, for though passed early in July, it was not declared to be law until 7th September 1926, and all persons concerned had ample opportunity to file their suits or other proceedings in the old *forum* before 7th September, 1926, or in the new *forum* within the new period of limitation. In such a case, the question is really one of *forum* and the two Bench decisions of the Allahabad High Court reported at pages 844 and 852 of the Allahabad Law Journal for 1931 lay down the correct law. A provision incorporating or similar to section 30, Limitation Act, might have been useful, but section 29 of the same Act shows that section 30 is not applicable to local Acts; and section 30 itself now stands repealed. See the case of *Reyasat v. Gopi Nath*<sup>1</sup> cited *ante* at page 7

The Act produces in Oudh two kinds of changes as regards *forum*. One is that certain suits and proceedings that were triable by Assistant Collectors of the second class are now made cognizable and triable by Assistant Collectors of the first class, and the other that certain suits not exclusively triable by revenue courts are now triable by them, and certain suits triable by revenue courts are now made triable by civil courts. Now, section 262 invests second class Assistant Collectors with powers to dispose of (a) the six classes of suits mentioned in items, 1 to 6 of Group A of the Fourth Schedule, where the value of the suit does not exceed rupees 200, and (b) applications in Group C.

Sections 258, 259, 260 and 262 empower an Assistant Collector of the first class to dispose of all suits and applications in Groups A, B and C, and Assistant Collector in charge of a subdivision to dispose of all applications in Group D, and a Collector to exercise all the powers which may be exercised under the Act by an Assistant Collector in charge of a subdivision, and, where there is no Assistant Collector in charge of a subdivision, to receive and entertain all suits in Group A under serial numbers 7 to 16 and all other suits in Group A of which the value exceeds Rs. 200, and all suits included in Group B, and all applications in Group D, which are ordinarily to be filed in the court of the Assistant Collector in charge of the subdivision.

Section 113 of the Oudh Act confined the jurisdiction of Assistant Collectors of the second class to try and determine all suits, of which

the value did not exceed Rs. 100, mentioned in section 108(1) (for delivery of a *kabuliat*), section 108(2) (for arrears of rent), section 108(7) (for delivery of a *patta*), section 108(9)(b) (for compensation on account of the withholding of a receipt for a payment of rent), section 108(12) (for abatement of rent), section 108(15), (16), (17) and (18) for share of profits or for settlement of account, for revenue paid by a lambardar or pattidar for other cosharers, or village expenses and other dues for which cosharers were responsible, or against a joint lambardar for compensation for revenue or rent paid on his account by the plaintiff lambardar, for compensation on account of exaction of revenue or rent or on account of the withholding of a receipt for a payment of revenue or rent, the suit being by a cosharer against a lambardar, or by proprietors or lessees against muafidars or assignees of revenue, and for arrears of revenue by muafidars or assignees of revenue. Section 114 empowered an Assistant Collector of the first class to try and determine suits of every description, and section 115 invested a Collector with all the powers of an Assistant Collector of the first class and of a Collector conferred by the Act.

It will thus be seen that the Oudh Act did not empower the Collector or an Assistant Collector of either class to try, determine and dispose of applications under the Act, or invest an Assistant Collector in charge of a subdivision with any special power beyond what he had as an Assistant Collector. An Assistant Collector of the first class had, as he has now, the power to try all suits now mentioned in Groups A and B. A Collector had, as he seems to have now, all the powers of an Assistant Collector of the first class as regards suits. An Assistant Collector of the second class had power to dispose of suits (the value of which did not exceed Rs. 200) now mentioned in items 1 to 6 of Group A of the Fourth Schedule. The other suits mentioned in section 113 of the Oudh Act are now to be tried and determined by Assistant Collectors of the first class.

All these changes ought not to raise any serious difficulty. Those proceedings which were already pending at the date of the Act will either remain where they were or be transferred to proper courts, if necessary.

A matter that may raise a legal problem is the restricted right of appeal given from the decisions of Collectors in original suits by the proviso to section 116 of the Oudh Act. Such an appeal did not lie except on a point of law or procedure. The appeal lay ordinarily to the commissioner whose decision was final. But in certain cases mentioned in section 119, appeals lay to civil courts without the restrictions imposed by the proviso to section 116. These cases are the same in which appeals now lie to civil courts. Suits mentioned in section 172 came under section 108(4) with appeals to the Commissioner and the Board of Revenue. Now they will lie to civil courts. Suits mentioned in sections 174, were not mentioned in the Oudh

Act. Section 108 did not mention suits now described in section 236 (e).

Appeals in other suits mentioned in section 108 lay to revenue courts, *i. e.*, suits in clauses (1), (1) (a), 3, 3 (a), 3 (aa), 4, 5, 6, 7, 8, 9 (c), 9 (d), 9 (e), 10, 10 (a), 10 (b), 12, 12 (a), 13, 14. Some of these suits are now in Group B, and the rest are now dealt with by applications, or no longer exist.

The question will arise as to the *forum* of appeal. Those appeals which were filed before the Act came into effect will be dealt with by the Courts in which they were filed. Appeals from decisions passed before the coming into operation of the Act and those passed after such event in suits filed before will be dealt with as indicated below under the caption "*forum* of appeal."

Suits which were mentioned in section 108 but are not comprised in Schedule IV will be triable by civil courts.

Suits connected with groves in Oudh were not mentioned in the Oudh Act and had to be brought mostly in civil courts. Now they will lie in revenue courts as under section 242.

A thekadar was in Oudh deemed to be a tenant for the purposes of certain sections mentioned in the definition of tenant (section 3 (10)), one of such sections being section 108. Now a special chapter is devoted to him.

*Forum of Appeal.*—Where a new Act alters the *forum* of appeal from a superior court (the Privy Council) to an inferior court (the High Court), the Privy Council has held that the new Act cannot take away the right of appeal to the superior court which existed at the date of the suit and substitute therefor a right of appeal to the inferior court which is provided for by the new Act at the date of the decision.<sup>1</sup> A Bench of the Allahabad High Court inferred from this that the Tenancy Act of 1926 could not take away a right of appeal to the civil courts which existed at the date of the institution of the suit and substitute a right of appeal to the revenue court, the new Act being in force at the date of the decision.<sup>2</sup> Another Bench of the same court had taken a contrary view in an earlier case<sup>3</sup> and held that the *forum* of appeal was governed by the new Act. There, an *ex parte* decree for arrears of rent was passed by an Assistant Collector of the first class in a suit valued at Rs. 109. No appeal was preferred but an application by the defendant under Order 9, Rule 13 U. P. C. to set aside the *ex parte* decree was rejected after coming into operation of

<sup>1</sup> *Colonial Sugar Refining Co. v. Irving*, 1905 A. C. 369.

<sup>2</sup> *Jai Jai Ram v. Janki*, 1929 A. L. J. 864=X U. D. H. C. 242=10 L. R. Rev. 300

<sup>3</sup> *Sarju Singh v. Harakh Chand*, IX U. D. H. C. 7=9 L. R. Rev. 18=1927 R. C. 470=109 I. C. 207=1928 A. I. R. All 143.

the new Act. No appeal lay from such an order either to the revenue or the civil court. On appeal to the Collector he opined that an appeal lay to the District Judge and returned the memo. of appeal for presentation to the proper court. The District Judge considered that an appeal lay to the Collector, and the High Court pronounced its view on a reference made to it. The High Court did not notice that under Act II of 1901 no appeal lay anywhere from the order; and wrongly held that although the suit was of a value of less than Rs. 200 and no appeal lay to the District Judge under the new Act, the District Judge had jurisdiction, since under the earlier Act an appeal from the decree would have lain to him.

The Board's decision<sup>1</sup> is inconclusive, for an appeal lay to the District Judge, both under Act II of 1901 and Act III of 1926. It is authority only for the view that a right of appeal cannot be taken away by the new Act.

4. **Affect any right, etc.**—The Act of 1901 secured what may be said to be the minimum rights of tenants and section 3 of that Act expressly took away the effect of any agreement made on or after the first of April, 1900, which purported to curtail such rights; but that section did not prevent a landholder from conferring larger rights on a tenant, *e. g.*, from granting perpetual or long term leases with rights of transfer, freedom from ejectment except for non-payment of rent, freedom from enhancement of rent, etc. Such leases were valid and binding on the day the Act of 1901 became repealed and the Act of 1926 came into operation. They conferred certain rights and privileges on the tenant, and the latter acquired such rights and privileges under the Act of 1901. Clause (b) of section 6 of the United Provinces General Clauses Act says that the previous operation of the repealed Act will not be affected by this Act. Hence, unless a different intention appears, the rights and privileges acquired by the previous operation of the Acts of 1901 and 1926 still exist under the new Act.

5. **Right of appeal.**—A right of appeal is part of the remedy. Hence, in the case of a decision given before the 7th of September, 1926, which Act II of 1901 made appealable, could be appealed from within the period of limitation, although the Act of 1926 made that decision unappealable.<sup>2</sup>

It necessarily followed that if an appeal was actually and properly filed while Act II of 1901 was in force, the fact that Act III of 1926 made the decision unappealable did not affect the result of the appeal.<sup>3</sup> The same will hold good now.

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<sup>1</sup> *Shabbira Khatoon v. Kalley Husain*, XI U. D. 3.

<sup>2</sup> *Bala Prasad v. Shyam Behari Lal*, 26 A. L. J. 406=IX U. D. H. C. 20=9 L. R. Rev. 38—1927 R. C. 467.

<sup>3</sup> *Girwar Lal v. Kallan*, VIII U. D. H. C. 189=8 L. R. Rev. 202.

The Allahabad High Court went much further in holding that the right of appeal was to be determined by the law at the date of the institution of the suit and not by the law at the date of the decision, so that if a matter was appealable at the former date, it remains so, although the new Act, which takes away the right of appeal, is in force at the date of the decision.<sup>1</sup> The reason given by the High Court is that an appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, and that the right to continue the proceedings cannot be affected by a new Act unless it expressly says so. Reliance was placed on *The Colonial Sugar Refining Co. v. Irving*,<sup>2</sup> and the *Delhi Cloth and General Mills Co. v. Commissioner of Income-Tax*.<sup>3</sup> The last-mentioned case was a converse case. There, no right of appeal existed when a judgment was pronounced, but an amendment made soon after conferred a right of appeal and advantage was sought to be taken of the amendment. Their Lordships, after referring to *The Colonial Sugar Refining Co.'s* case, observed that an order which was final at the date of its pronouncement cannot have that finality taken away by a subsequent amendment of the Act. It was also opined that *Zamin Ali Khan v. Genda*<sup>4</sup> must be deemed to have been over-ruled by the Privy Council. In 26 All 375, a right of second appeal existed when the suit was instituted and when it was decided by the Collector as the court of first appeal, but was taken away by Act II of 1901, and it was held that no second appeal lay as the new Act must govern all appeals filed after its commencement. The case was wrongly decided as the new Act could not take away a right which came into existence at the date of the decision appealed from, if not earlier. The case in 9 Lah. does not support the conclusion of the learned Judges in 50 All 965, as in that case no right of appeal existed at the date of the decision and the amending Act cannot destroy the finality which attached to the decision at the date of its pronouncement. Nor does the *Colonial Sugar Refining Co.'s* case support 50 All. 965. There the question was in which forum an appeal lay. At the date of the suit, it lay to the Privy Council: but at the time of the decision under appeal it lay to the High Court. The case is therefore authority only for the view that a new enactment cannot take away a right of appeal to a superior court. It is therefore submitted that 50 All. 965 is based on cases which do not altogether support it; and the only question is whether a right of appeal arises when the decision sought to be appealed is pronounced or when the suit in which the decision was given was instituted. A right of appeal is given to a party aggrieved by a decision (sections 96, 100, Civil Procedure Code), (and sections 264, 265, 266, 267, 269, 270, 271 of this Act) and that would show that a right of appeal arises at the date of the decision.

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<sup>1</sup> *Ram Singh v. Shankar Dayal*, 50 All. 965=IX U. D H C. 193=9 L. R. Rev. 270.

<sup>2</sup> 1905 A C. 369.

<sup>3</sup> 9 Lah 284 (P. C.).

<sup>4</sup> 26 All. 375.

Consider the matter from another point of view. Suppose, at the date of the institution of a suit, a decision in it would be unappealable; but at the date of the decision, the law makes it appealable. If the reason that an appeal is a mere continuance of the proceeding initiated by the institution of the plaint and that the right to continue the proceeding cannot be affected by a new enactment is correct, then the decision would remain unappealable, a view very hard to accept and negatived by the Privy Council Case in 9 Lah.

6. The words *right, privilege*, etc., refer to substantive rights and not to procedure, for no one has any vested right in procedure, and any proceeding is to be regulated by the procedure then prevalent, whether the proceeding commenced before or after the passing of the Act.<sup>1</sup>

There in a suit, commenced in a civil court before 7th September, 1926, against a thekadar, the latter pleaded that he was a lessee of an agricultural holding; section 273 of the Act of 1926 and not section 202 of the Act of 1901 was applied.

3. In this Act, unless there is something repugnant in the subject or context,—  
Interpretations

(1) all words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such person.

(2) "agricultural year" means the year commencing on the first day of July and ending on the thirtieth day of June.

(3) "Board," "commissioner," "collector," "revenue court," "revenue officer," "settlement officer," "assistant settlement officer," "assistant collector," "assistant collector in charge of a sub-division," "tahsildar," "mahal," "lambardar," "sub-proprietor," "under-proprietor," "superior-proprietor," and "minor" have the same meaning as in the United Provinces Land Revenue Act, III of 1901, except that a sub-proprietor does not include a rent-free grantee.

(4) "commissioner" includes an additional commissioner and "collector" includes an additional collector.

(5) "crops" include shrubs, bushes, plants and climbers such as tea bushes, rose bushes, betel plants, plantains and papitas.

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<sup>1</sup> *Nisar Husain v. Sundar Lal*, 50 All. 202 = 25 A. L. J. 1025 = 104 I. C. 292 = VIII U. D. H. C. 242.



(6) “grove-land” means any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they preclude, or when full grown will preclude, the land or any considerable portion thereof from being used primarily for any other purpose ; and the trees on such land constitute a grove.

(7) “holding” means a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure and in the case of a thekadar includes the theka area.

(8) “improvement” means with reference to a tenant's holding :

(i) a dwelling house erected on the holding by the tenant for his own occupation or a cattle-shed or a store-house or any other construction for agricultural purposes erected or set up by him on his holding ;

(ii) any work which adds materially to the value of the holding and is consistent with the purpose, for which it was let, and which, if not executed on the holding, is either executed directly for its benefit or is after execution made directly beneficial to it ; and, subject to the foregoing provisions of this clause, includes—

(a) the construction of wells, water channels, and other works for the supply or distribution of water for agricultural purposes ;

(b) the construction of works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water ;

(c) the reclaiming, clearing, enclosing, levelling, or terracing of land ;

(d) the erection in the immediate vicinity of the holding otherwise than on the village site, of buildings required for the convenient or profitable use or occupation of the holding ;

(e) the construction of tanks or other works for the storage of water for agricultural purposes ;

(f) the renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of mere repairs :

Provided that such water channels, embankments, enclosures, temporary wells, or other works as are made by tenants in the

ordinary course of cultivation shall not be deemed to be improvements.

(9) "khudkasht" means land other than *sir* cultivated by a landlord, an under-proprietor or a permanent tenure-holder as such either himself or by servants or by hired labour.

(10) "land" means land which is let or held for growing of crops, or as groveland or for pasturage. It includes land covered by water used for the purpose of growing *singhara* or other produce, but does not include land for the time being occupied by buildings or appurtenant thereto other than buildings which are improvements.

(11) "landholder" means the person to whom rent is, or, but for a contract express or implied would be, payable, but except in Chapter VII and Chapter XIII does not include an assignee of rent or a person who has lost the proprietary or other interest by virtue of which rent became payable to him.

(12) "landlord" means the proprietor of a mahal, or of a share, or specific plot, therein. In Agra it includes a sub-proprietor; in Oudh, except as otherwise provided in this Act, it does not include an under-proprietor.

(13) "lease" includes the counterpart of a lease.

(14) "pay" with its grammatical variations and cognate expressions, when used with reference to rent, includes "deliver" with its grammatical variations and cognate expressions.

(15) "permanent lessee" means a person in Oudh who holds under a heritable non-transferable lease and who is entered in the register maintained under the provisions of clause (b) or clause (c) of section 32 of the United Provinces Land Revenue Act, III of 1901.

(16) "recorded" means recorded in a register maintained under the provisions of section 32 of the United Provinces Land Revenue Act, III of 1901.

(17) "registered" means registered under any Act for the time being in force for the registration of documents and includes "attested" under the provisions of section 57.

(18) "rent" means whatever is, in cash or kind, or partly in cash and partly in kind, payable on account of the use or occupation of land or on account of any right in land and in Chapter VII, except when the contrary intention appears, includes *sayar*.

**Explanation**—A share of the timber or its value deliverable or payable to the landholder on a sale of trees by a grove-holder is rent.

(19) "revenue" means land revenue and includes revenue assessed only for the purpose of calculating the local rate payable under the United Provinces Local Rates Act, 1914.

(20) "sayer" includes whatever is to be paid or delivered by a lessee or licensee on account of the right of gathering produce, forest rights, fisheries and the use of water for irrigation from artificial sources.

(21) "sir-holder" means a landlord, an under-proprietor, or a permanent tenure-holder, who possesses *sir*.

(22) "sub-tenant" means a person who holds land from the tenant thereof other than a permanent tenure-holder, or from a grove-holder or from a rent-free grantee or from a grantee at a favourable rate of rent and by whom rent is, or but for a contract express or implied would be, payable.

(23) "tenant" means the person by whom rent is, or but for a contract express or implied would be, payable and, except when the contrary intention appears, includes a sub-tenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent-free grantee, a grantee at a favourable rate of rent or, except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekadar.

(24) "thekadar" means a farmer or other lessee of the rights in land of a proprietor, an under-proprietor or a permanent lessee or mortgagee in possession and in particular of the right to receive rents or profits, but does not include an under-proprietor or a permanent lessee.

1. *Subsection (1)*—This definition is reproduced from section 3(1) of the Agra Act of 1926 which was the same as cl. (1) of section 4 of the Act of 1901. It had no counterpart in the Oudh Act.

Subsection (1) does away with the necessity of inserting in each section words relating to predecessors and successors in interest.

Under the Act of 1901 it was held that where a widow completed the period of 12 years for occupancy rights begun by her husband, occupancy rights accrued in favour of the estate.<sup>1</sup>

A lambardar is a co-sharer. So far as he is a co-sharer this section will apply.

<sup>1</sup> *Thakur Das v. Rewa Ram*, 4 Rev. and Cr. L. J. 32=III U. D. 81 = 5 R. D. 476.

The words predecessors and successors connote privity of estate. Hence, when a person desires to claim the benefit of a right enjoyed by its prior holder, he must prove privity of estate with him, *e. g.*, by inheritance, assignment, sale, gift, etc. A mere trespasser has no such privity with one against whom he has been trespassing.

Privity of estate must arise in a manner allowed by law. Non-occupancy rights are not transferable. Hence a transferee of such rights could not claim the status of an occupancy tenant by adding the period of his own occupation to that of the transferor. Nor can a transferee of an expropriary or occupancy right claim such right. His status, if that of a tenant, is that of a tenant-at-will from the date of the transfer.

Subsection (1) refers only to interest in land. Rent which has already accrued due is a debt and not an interest in land. Therefore an assignee of such rent is not in the position of a landholder, and cannot, as such, avail himself of the provisions of the Act, except to the extent that he is included in the definition of landholder, see sub-section (11) and note 6 to section 148.

The heir of a deceased tenant, if he takes up the tenancy, is liable for any arrears of rent due from the deceased. But if he does not take up the tenancy, he is liable only to the extent of the assets of the deceased in his hands. A, a fixed rate tenant, has some arrears of the rent due from him when his holding is sold by auction. On his death his heir must pay the arrears from any assets of the deceased in his hands.<sup>1</sup>

2. *Subsection (2) Agricultural year.*—This definition existed in the Agra Act, section 3(9) and in the Oudh Act section 3(20) Fasli year in a lease means an Agricultural year<sup>2</sup>.

4. *Subsection (3)* and some of these expressions were to be found in section 3 (12) of the Agra Act.

"Superior proprietor," "Assistant Collector in charge of a sub-division," "Sub-proprietor," "Under-proprietor" and except that a sub-proprietor does not include a rent-free grantee" have been added.

5. *Subsection (5) Crops*—The definition is defective in phraseology. It is the leaves of tea bushes, the flowers of rose bushes, the leaves of betel plants that should be included in the word crops and not the plants themselves

This definition and that of land as modified by it give effect to pre-existing law, *e. g.* that a betel leaf plantation was on agricultural

<sup>1</sup> *Maharajah of Benares v. Daljit Singh*, 19 All. 352=17 A. W. N. 88=2 U. D. 216; *Lekhraj v. Rai Singh*, 14 All. 318=12 A. W. N. 143 (F. B.)

<sup>2</sup> *Abu Jafar v. Sonjhare*, 14 U. D. 463=2 L. R. Rev. 139=7 R. and Cr. L. J. 237.

land and not on groveland,<sup>1</sup> so a tea plantation,<sup>2</sup> so a plantain plantation.<sup>3</sup>

*Subsection (6)—Groveland.*—The definition reproduces that under section 3 (15) of the Agra Act with slight changes. The words “or mahals” and “they preclude or” have been added. The two explanations have also been omitted. Explanation I excluded tea plants, rose bushes, betel plants, plantains and papitas, or any mere shrubs, bushes, plants or climbers from the conception of trees. They are certainly not trees. Explanation II made trees include fruit-bearing trees, such as mango or jack fruit, which occupy the land for a long time, but excluded trees, such as guavas or peaches, which occupy the land for comparatively short periods. The distinction had no rational basis. Bamboo clumps are included in trees.<sup>4</sup>

(a) *Specific piece of land.*—Trees scattered about over a considerable area *e.g.* a contonment, town etc. do not make the area groveland; so also trees spread over a large area without interfering any way with the agricultural nature of the land.<sup>5</sup>

(b) *Groveland.*—Is land and constitutes a holding but not so trees planted on it.<sup>6</sup> A grove planted by the tenant on the occupancy holding while the Act of 1901 was in force was not transferable; and if only the trees in it were sold, the purchaser acquired only the right to remove the trees but could not hold on to the land.<sup>7</sup>

(c) *Mahal or mahals.*—The last two words remove a doubt which existed under the earlier definition.

(d) *Having trees planted thereon.*—The word ‘planted’ excludes the idea of a clump or number of self sown trees such as *babul* from making the land they stand on groveland. Bamboo clumps are trees and if self-sown, as they mostly are, will not turn the land into groveland.<sup>8</sup>

<sup>1</sup> *Loola v. Pyare*, 12 N. L. R. 57=33 I. C. 497.

<sup>2</sup> *Jai Mangal Singh v. Ouseley*, 11 U. D. 756.

<sup>3</sup> *Parmeshar Rao v. Gurkhu Rao*, 111 U. D. 471; *Babu Nandun Singh v. Phunesh Singh*, 1937 A. L. J. 46, 51=1936 R. D. 543=1937 A. I. R. All. 105.

<sup>4</sup> *Ali Husain v. Maream Bibi*, XV U. D. 64=15 L. R. Rev. 122.

<sup>5</sup> *Hazar v. Ram Dular*, VI U. D. 275=1925 All. 702; *Durga Naram Singh v. Chhaddami Lal*, XV U. D. 416=16 L. R. Rev. 14.

<sup>6</sup> *Baqridi v. Bhagwan Din*, 57 All. 922=1935 A. L. J. 520=1935 A. I. R. All. 603=8 R. D. 220, per Sulaiman, C. J. (Contra per Bannet, J.).

<sup>7</sup> *Lachman Singh v. Mulwa*, 1939, A. L. J. 209=1939 A. I. R. All. 224=R. D. 110

<sup>8</sup> *Visheshwar Nath v. Mahmud Hasan Khan*, XVI U. D. 444=1935 R. D. 475, So held also in *Mubinnunissa v. Babu Lal*, IX U. D. 69=9 L. R. 251; *Sri Thakur Rasak Behari v. Phool Kunwar*, XIII U. D. 92, but see *Gangu Sahai v. Sardar*, VI U. D. 147.

(e) *Trees*.—The dictionary meaning of tree is a plant having a single trunk, woody, branched and of a large size. Judged by this definition fruit-bearing trees, such as mango, jack-fruit, guava, peach trees are trees, and they will now be so claimed, thus over-riding the decisions to the contrary.<sup>1</sup> Land let or held for growing crops, shrubs, bushes, plants and climbers, such as tea bushes, rose bushes, betel plants, plantains and papittas is land, though not groveland. *Ber* trees have been held not to be trees,<sup>2</sup> and an orchard of lemons and guavas was denied the character of a grove.<sup>3</sup>

*Groveland and grove*.—Trees which constitute a grove are on groveland and therefore on the land as defined in the Act; and the groveland constitutes a holding,<sup>4</sup> but the grove itself was held not to be land or to constitute a holding.<sup>5</sup>

It was held that a person in possession of a grove not planted by himself or his ancestors was not a groveholder, and if he cultivated the land underneath the trees and paid rent for it he was a tenant,<sup>6</sup> and a grove on a zamindar's khudkasht was in the absence of contrary evidence presumed to have been planted by the zamindar and to be his grove.<sup>7</sup> Ten mango trees on four acres of land,<sup>8</sup> or six trees in a group and a few scattered ones,<sup>9</sup> or four mango trees, one jamun tree, and two *tari* trees, excluding shrubs and sesame trees on an area of 8 acres,<sup>10</sup> or 9 trees standing on an area of 1 bigha 17 biswas pucca and those all round the boundary<sup>11</sup> do not constitute a grove, but 28 or 30 trees on two acres may.<sup>12</sup>

A full grown tree requires approximately 80 sq. yards. Hence, a plantation of 11 trees and some bushes on a plot of 8 bighas 14

<sup>1</sup> *Ram Sunder v Jogi*, B. R. of 1908 (guava); *Tara Chand v Balgovind*, XIV U. D. 37, 14 L. R. Rev. 93—See *Municipal Board v Mahadeo*, IV U. D. 497; *Bhaya Lal v. Sheo Govind*, 7 L. R. Rev. 213, *Muhammad Bashir Khan v. Sukhnandan Lal*, V U. D. 58=8 R. and Cr. L. J. 166 (custard apple); *Ashraf Ali v. Mafruzumissa*, XVI U. D. 471 (*Ber*), *Sheo Adhar v. Mangala*, 1935 R. D. 14=16 L. R. Rev. 180 (guava and lemon).

<sup>2</sup> *Masitullah v. Sardar Singh*, XIX U. D. 230=1938 R. D. 659.

<sup>3</sup> *Mahesh Singh v. Moolu*, XIX U. D. 227=1938 R. D. 656=1938 A. L. J. (B. R.) 86.

<sup>4</sup> *Ram Adhin v. Lachmi Narayan*, 1935 A. I. R. All. 843=1935 R. D. 390.

<sup>5</sup> *Baqridi v. Bhagwandin*, 1935 A. L. J. 520 cited *ante*.

<sup>6</sup> *Gulzari Lal v. Kanhai*, II U. D. 14.

<sup>7</sup> *Mohan v. Malik Muhammad Ihsan-ullah Khan*, XVIII U. D. 202.

<sup>8</sup> *Lachmi Narain v. Kamta*, II U. D. 367.

<sup>9</sup> *Jaigopal v. Ram Kishen*, II U. D. 602; *Ram Chandru Singh v. Chhabila Singh*, 14 L. R. Rev. 210.

<sup>10</sup> *Durga Narain Singh v. Kalka*, XII U. D. 325.

<sup>11</sup> *Brij Kishore v. Abdul Rahman*, 14 L. R. Rev. 627, XIV U. D. 322.

<sup>12</sup> *Inderjit Singh v. Jat Karan Singh*, II U. D. 567.

hiswas *pucca* does not make it groveland.<sup>1</sup> Nor seven trees on an area of 1½ bighas as covering less than a seventh of the total area.<sup>2</sup> However, the acid test is provided by the capability of a major portion of the land being put to another use. It is not the number of trees but the location of the trees that would matter.<sup>3</sup>

Isolated trees planted by a tenant do not constitute a grove or make the tenant a grovelholder.<sup>4</sup>

If a land granted for planting a grove is not planted with trees at all or with trees not in sufficient numbers so as to constitute a grove, or the trees or a considerable number of them (leaving a few insufficient to constitute a grove) have been cut or removed or have fallen into decay, and have not been replaced or there is no intention of replacing them, and the land once occupied by them is used primarily for agriculture, the grove ceases to exist, and the groveland becomes ordinary land as defined in the Act.<sup>5</sup>

But it has been held that land let for planting a grove at once becomes groveland irrespective of the size of the trees on it.<sup>6</sup>

Where, whilst a grove is being made, wheat and oats are being sown between the trees the land is not groveland.<sup>7</sup>

The occasional taking of a fodder crop from a groveland does not make it a cultivated area.<sup>8</sup>

What the Court has to see is not the purpose for which the land was originally let or the class of tenure to which it belonged, but the existing state of things. If plantation took place on ordinary agricultural land or on land granted for agriculture, the remedy of the landholder is a suit for ejection, and if he did not avail himself of it, but allowed the trees to become a grove or nearly one, the Court will be justified in inferring consent of the landlord to the transformation or the altered use of the land. The trees will constitute a grove, as under an implied grant for planting a grove, and the ordinary agricultural nature of the land and its class as to tenure will be deemed to have disappeared or become suspended during the existence of the grove. In other words, a tenant of agricultural land will under such circumstances cease to belong to any of the classes of tenants enumerated in section 21, and will be

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<sup>1</sup> *Gaushala Society v Sukhdeen*, 14 L. R. Rev. 729=XIV U. D. 391=17 R. D. 1000.

<sup>2</sup> *Sheo Balak v. Nubi Bakhsh*, XVI U. D. 474.

<sup>3</sup> *Manohar Das v. Syed Kazim Husain*, 1959 R. D. 326.

<sup>4</sup> *Kashi v. Jajgo Bibi*, 15 L. R. Rev. 54=1934 A. L. J. 115=1934 A. I. R. All 290=XV U. D. H. C. 2; *Sachla v. Ram Sakal Rai*, XVI U. D. 466.

<sup>5</sup> *Lachmi Narain v. Sardar*, I U. D. 123.

<sup>6</sup> *Habibullah Khan v. Bhabuti*, 1934 A. I. R. All. 551=XV U. D. H. C. 45=15 L. R. Rev. 250=18 R. D. 209.

<sup>7</sup> *Kashi Ram v. Nawab Sultan*, XVI U. D. 471.

<sup>8</sup> *Sarju v. Afzal Husain*, I U. D. 114; *Niaz Husain v. Tika Ram*, IV U. D. 671.

deemed a groveholder.<sup>1</sup> But a landholder may sue for ejectment because of such conversion if the grove is of recent origin and the trees too young to imply consent or acquiescence.<sup>2</sup>

The same expression makes it the duty of a Court to ascertain whether, when the matter comes up before it, there are sufficient trees either planted or about to be planted to constitute a grove.

*In such numbers.*—Any doubt that may have existed owing to the absence of the words ‘they preclude’ is now removed. The test as to numbers was and is precluding ‘the land or any considerable portion thereof from being used primarily for any other purpose,’ with particular emphasis on the word ‘primarily.’ Whether a plantation of trees has this effect of precluding is a mixed question of fact and law.<sup>3</sup> The number that will have this effect depends on the area of the land on which the trees stand, the normal size of the trees, their grouping and situation etc.

The question becomes of much importance when a grove is alleged to have ceased to be one, although some trees are still standing thereon. The subject will be found discussed in the Chapter on Groves.

7. *Subsection (7) Holding.*—Reproduced from the Agra Act, section 3(8) with some alterations.

Only land as defined in the Act can be the subject of a holding. Unity of tenure, without a lease, engagement or grant, makes several parcels of land a holding.

A *theka* area is now a holding.<sup>4</sup> Does the word *grant* bring the land of a rent-free grantee under a holding?

8. *Subsection (8)—Improvement.*—This is section 3(11) of the Agra Act, with some changes. The definition in section 26 of the Oudh Act was not so full. Clause (i) is quite new; under clause (ii) nothing is an improvement which does not add materially to the value of the holding, not necessarily the letting value as was the case under the repealed Acts. The work must be consistent with the purpose for which the land was let. A work, *e.g.*, building or plantation of trees which alters the character of the land, and which is beyond what is mentioned or permissible in the definition is not an improvement but an act of waste.

<sup>1</sup> *Rabi Partab Singh v. Khumai*, V U. D. 479=4 L. R. Rev. 252=9 Rev. and Cr. L. J. 258; *Jalesar v. Raj Mangal*, 43 All. 606=19 A. L. J. 616=IV U. D. 726; *Chikuri v. Sat Narain Pal Singh*, IV U. D. 449; *Dularey v. Bhimma*, IV U. D. 590, *Contra*, 28 I. C. 852=13 A. L. J. 833. This even if the papers record the land as occupancy, *Pargan Singh v. Umrai*, III U. D. 253.

<sup>2</sup> *Baldeo v. Harnandan*, II U. D. 123=2 Rev. and Cr. L. J. 266.

<sup>3</sup> *Mubinunnissa v. Babu Lal*, IX U. D. 69=9 L. R. Rev. 251.

<sup>4</sup> *Makund Sarup v. Kishan Chand*, XVI U. D. 132=1935 A. I. R. All. 382, =1935 B. D. 111.



*Building etc. on the holding*—Clause (i) includes in improvement a dwelling-house erected on the holding by the tenant for his own occupation or a cattle-shed or store-house erected by him or any other construction for agricultural purposes erected or set up by him on his holding. The words “any other construction for agricultural purposes” leave much room for fruitless litigation and for the play of forensic skill. Under clause (ii) (d) the erection on the holding (or in its immediate vicinity otherwise than on the village site) of buildings which are not an improvement under cl. (i) may be an improvement if it satisfies the test as to adding to the value of the land etc. indicated.

Clause (iii)—where land was let for planting trees, the planting of trees was an improvement<sup>1</sup>. A grove planted before 1902 was held not to be an improvement.<sup>2</sup>

Planting of trees on a holding<sup>3</sup> or making it into a grove<sup>4</sup> was at one time inconsistent with the purpose of letting.

It is open to question whether planting of trees can be called a work within clause (iii) or a construction within clause (i); and if the answer is in the negative as appears very probable, such planting will not be deemed to be an improvement.

Plantation of trees and groves could be improvements<sup>5</sup> in Agra, but not necessarily so, and could be acts of waste, if such plantation made the land substantially unfit for cultivation,<sup>6</sup> which was a reason for ejection in both the provinces.

Clause (ii) first prescribes the general conditions which, if satisfied, constitute any work an improvement, and then mentions some specific works which come under that heading.

Clause (a) is similar to section (11) of the Agra Act. A well was held not to include a *chah kham*, as it was only temporary.<sup>7</sup> Construction of a pucca well on a holding was not considered necessarily an act of waste. Wells for irrigation purposes alone constitute improvement.<sup>8</sup> A well for drinking purposes alone is not an improvement.<sup>9</sup> Construction of wells is generally speaking beneficial to a holding.<sup>9</sup>

<sup>1</sup> *Baqridi v. Bhagwan Das* 57 All. 422=1935 A. L. J. 520=1935 A. I. R. All. 608=1935 R. D. 220

<sup>2</sup> *Payal v. Bijai Nath*, 29 I. C. 560.

<sup>3</sup> *Lachman Dass v. Mohan Singh*, 9 A. L. J. 672=14 I. C. 582; *Shyam Narain v. Ram Prasad*, 10 I. C. 28.

<sup>4</sup> *Bholai v. Ram Singh*, 4 All. 174.

<sup>5</sup> *Bhawan v. Zahur Ali*, II U. D. 191.

<sup>6</sup> *Meen Inder Singh v. Chedi*, B. R. 23 of 1891; *Darsan Singh v. Sheoraj Singh*, IV U. D. 37=56 I. C. 286.

<sup>7</sup> *Surja v. Panna*, XVIII U. D. 249. This is made clear by proviso (ii) to the definition.

<sup>8</sup> *Bholai v. Ram Singh*, 4 All. 174; *Debi Prasad v. Har Dayal*, 7 All. 691=5 A. W. N. 205, Oudh Rent Act Ruling No. 20.

<sup>9</sup> *Raghu Nandan Singh v. Jarao*, 15 O. C. 170=13 I. C. 554.

A tenant has a right to make an improvement and cannot be restrained by injunction from constructing one or be compelled to destroy one on his holding even if made without the landlord's consent. At the most he may be deprived of compensation.<sup>1</sup>

Clause (b) is clause (b) of section 3 (11) of the *Agra Act*.

Clause (c) is clause (c) of section 3 (11) of the same, which also included the planting of trees.

Clause (d) is somewhat different from clause (e) of the old section 3 (11). A dwelling-house erected in the immediate vicinity, otherwise than on the village site, may be an improvement if it satisfies the general conditions mentioned in the definition of improvement.

The expression "otherwise than on the village site" was given full effect to in a decided case.<sup>2</sup>

Clause (e)—Tanks or other works must be for the storage of water for agricultural purposes.

Clause (f) was clause (e) of the *Agra Act*. Section 26 (b) of the *Oudh Act* was similar, and had "as are not required for the maintenance thereof and increase durably their value" instead of "as are not of the nature of mere repairs."

9. *Subsection (9) Khudkasht*.—This definition, introduced for the first time, gives expression to current views. Reading it with the definition of landlord, a sub-proprietor may have *khudkasht*. Under-proprietor is mentioned specially as he is not a landlord. Like a sub-proprietor, a permanent tenure-holder may have *khudkasht*, but not any other class of tenants.

10. *Subsection (10)—Land*.—The definition alters the definition in section 3 (3) of the *Agra Act*. The words "buildings" "other..... improvements" replace "dwelling-houses or manufactories."

In the *Oudh Act* land was defined to include "ungathered produce of land, whether spontaneous or not and whether growing in earth or in water" and to exclude "land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto so long as that land is not let to agricultural tenants."

The words "growing crops" displace "agricultural purposes" and do away with a deal of legal lore and literature on the subject. As crops include shrubs, rose bushes, etc., a plot of ground used as a nursery for the kind of things mentioned in the definition of crops will come under the definition. Crops will include vegetables grown for the market and hence a plot used for growing such vegetables will be land. This was also the view in *Babu Nandan Singh v. Phunesh Singh*.<sup>3</sup>

<sup>1</sup> *Raghunandan Singh v. Jarao*, 15 O. C. 170; *Shen Churn v. Busant Singh*, 3 N. W. P. 282 (F. B.); *Raj Bahadur v. Burmha Singh*, 3 All. 85; *Muhammad Raza Khan v. Dalip*, 12 A. W. N. 103; *Dharam Raj v. Sumeran*, 21 All. 386.

<sup>2</sup> *Jagar Nath v. Gur Dyal Singh*, 10 I. C. 284.

<sup>3</sup> 1937 A. L. J. 46, 51—1937 A. I. R. All. 105—1936 R. D. 543.

The word agriculture was held to include horticulture.<sup>1</sup> Horticulture, when its object is not to grow crops as defined in the Act will not now bring the ground under the definition of land. Garden cultivation in a petty courtyard in front of a house will not make the land an agricultural land.<sup>2</sup>

*Let or held.*—i. e., either let for growing crops, or held for growing crops, or let and held for growing crops. If the original purpose of a letting was for growing crops, the actual present or subsequent use of the land for any other purpose, even without the landholder's consent, will not take away the character as land though it may expose the tenant to ejectment for using the land for purposes other than those for which it was let.<sup>3</sup> The age or number of buildings may show that the original purpose was abandoned.

A piece of barren land situated in the middle of crop-growing land which was used in the past for growing crops and will in future be so used is land.<sup>4</sup>

Land let for other purposes, e. g., for building, does not become land unless and until it is used for growing crops.<sup>5</sup>

A permanent lease, for a *nazrana*, which is expressed to be hereditary and empowers the lessee to plant a grove or construct buildings and to transfer in any way he likes, was held to be governed by section 23 of the Act of 1926 as the land had been let for agricultural purposes, although the grove had not been planted, and his interest in it was held not to be saleable in execution of a Civil Court decree for money.<sup>6</sup>

A plot of land occupied by houses and bamboo clumps is of course not land<sup>7</sup>. A right to collect the rent of a fixed-rate tenant is not land, nor is the grantee of such a right a tenant of a holding.<sup>8</sup>

Land in the compound of a bungalow not used for growing crops is not land<sup>9</sup>; nor land adjoining a house in the *abadi* of a village on which only castor plants grow.<sup>10</sup>

<sup>1</sup> *Babu Nandan Singh v. Phunesh Singh*, 1937 A. L. J. 46 51=1937 A. I. R. All. 105=1936 R. D. 543.

<sup>2</sup> *Jai Mangal v. Laqua*, 1939 A. L. J. (B. R.) 35=1939 R. D. 243=XX U. D. 226.

<sup>3</sup> See *Rajman v. Gangra Din*, VII U. D. 12=7 L. R. Rev. 195=1926 R. C. 239; *Jitan Singh v. Harbans*, II U. D. 510; *Hukum Singh v. Bish Nath Singh*, B. R. 11 of 1923=VI U. D. (B. R.) 7, but see *Bindhya Chal Gobind Prasad v. Rup*, V U. D. 267=1922 R. C. 368=7 R. D. 457; *Sheo Balak Singh v. Sheo Raj Singh*, III U. D. 99.

<sup>4</sup> *Sri Thakur Rasak Bahari Lalji v. Phool Kunwar*, XIII U. D. 92=13 L. R. Rev. 289.

<sup>5</sup> *Debi Das v. Joti*, B. R. 19 of 1892.

<sup>6</sup> *Lachmi Narain v. Batuk Singh*, 1937 A. L. J. 656=1937 A. I. R. All. 561=1937 R. D. 425=XVII U. D. (H. C.) 171.

<sup>7</sup> *Bindhya Chal Govind Prasad v. Rup*, V U. D. 267=1922 R. C. 368.

<sup>8</sup> *Siddiq v. Ram Anwar*, 39 All. 675=15 A. L. J. 745.

<sup>9</sup> *Laik Ram v. Mahendra Man Singh*, IV U. D. 111=1 L. R. Rev. 189.

<sup>10</sup> *Bibi Ramji v. Chundi*, XIV U. D. 326=14 L. R. Rev. 622.

*Lands occupied by buildings etc*—Neither Act XVIII of 1873 nor Act XII of 1881 defined ‘land’ but section 1 of both Acts made them inapplicable to “land for the time being occupied by dwelling-houses or manufactories or appurtenant thereto,” the Act of 1881 adding “so long as such land is not let to agricultural tenants.” The definition of the repealed and of the present Act serves the same purposes as the exclusion of the old Acts.

The words “for the time being” did not necessarily confine the clause to the present condition or state of the buildings, though the condition of the buildings could in the absence of other evidence, be considered to ascertain what was the main thing leased. Where land and buildings existed on the same holding the question naturally arose whether any of these Acts applied, and the test suggested by Mr. House<sup>1</sup> was:—“Is the tenant, not necessarily by sole or principal occupation, but in respect of the particular land, a tenant for agricultural purposes and are the buildings on it subservient or incidental to its occupation for such purposes, or are the lands merely an adjunct of the buildings? In the former case the Act applies, in the latter it does not, any more than it would apply in the case of land leased for building purposes whether building had in fact been erected on the land or not. There are cases in which the erection of buildings is necessary for the proper enjoyment of the lease. Thus where land was let for the purpose of building a house and the lessee planted a garden on a portion of it,<sup>2</sup> or for the erection and maintenance of a school and a church,<sup>3</sup> or where at a partition some land (seven bighas) in the share of one cosharer was allotted to another, at a yearly rent, as an appanage to a considerable block of building, including a mosque belonging to him<sup>4</sup> or where land was let for an indigo factory and a portion of it which was appurtenant to the factory, was sublet for cultivation,<sup>5</sup> the Rent Act was held not to apply. But where land was let for growing indigo and some factory buildings were put thereon as appurtenances, the Rent Act was held to govern the relation of the parties.<sup>6</sup> Land used for growing thatching grass is not held for agricultural purposes. These rulings are still useful as showing the extent of the application of the present Act.

It was also held that land appurtenant to a building did not cease to be so because the buildings were uninhabited and out of repairs.<sup>7</sup>

<sup>1</sup> Rent Act, p. 78.

<sup>2</sup> *Kalee Kishen v Janki*, 8 W. R. 250; *Chandessari v. Ghinah*, 24 W. R. 152.

<sup>3</sup> *Shunomoyee v. Blunhardt*, 9 W. R. 552.

<sup>4</sup> *Khair-oo-deen v. Abdul Baker*, 11 W. R. 440.

<sup>5</sup> *Muhammad Ismail v. Abdul Rashid*, B. R. 4 of 1891; *Oodit Chander v Comolo*, Marsh. 401=2 Hay 529.

<sup>6</sup> *Sharoda Prasad v. Srinath*, 15 W. R. 520.

<sup>7</sup> *Muhammad Taki v. Wali Muhammad*, 2 L. R. 1.

Land let for agricultural purposes which is occupied by dwelling houses or manufactories appurtenant thereto was held not to be land within the Act and could be built upon.<sup>1</sup> Abandonment of the original purpose may be inferred here.

11. **Pasture-land** is now included in the term land.<sup>2</sup> Under the repealed Act, pasture-land was not land over which occupancy rights could be acquired<sup>3</sup>; but the consideration for the lease or letting was rent and therefore the relation between the parties was that of landlord and tenant.<sup>4</sup>

The revenue court was the proper *forum* to eject an occupier of pasture-land held on rent, and the latter had the remedy of section 95 of the Act of 1901, open to him.<sup>5</sup>

Only pasture-land is land now. Land not let or held for growing crops, but either fallow for a long time<sup>6</sup> or used for growing *pula* grass,<sup>7</sup> or for growing thatching grass<sup>8</sup> was not land over which occupancy rights could be acquired and is not land now.

Pasture-land includes land which is partly used for pasturage even though mainly for the growth of grass which is more useful for thatching than for cattle fodder.<sup>9</sup> Thatching grass is not cultivated anywhere for agricultural purposes, but grows naturally and therefore does not require man's labour, which underlies the idea in agricultural purposes.

Where a tenant used a small portion of his land for purposes necessary for his work as a tenant, *e. g.*, for production of thatching grass and fodder for cattle and that land formed an integral part of his holding, he was held entitled to acquire occupancy rights (under section 11

<sup>1</sup> *Ahmad Nazar Beg v. Brij Nandan Prasad*, XVI U. D. 646=1935 A. L. R. All. 1040=1935 R. D. 480.

<sup>2</sup> See *Ram Prasad v. Benares Cotton and Silk Mills*, 52 All. 566=XI U. D. (H. C.) 157.

<sup>3</sup> *Sheo Balak Singh v. Sheoraj Singh*, III U. D. 99; *Misra Kalicharan v. Situl*, III U. D. 293; *Muhammad Khan v. Ganga Ram*, B. R. 6 of 1910; *Lalta Prasad v. Kasturi Singh*, XI U. D. 47; *Hukum Singh v. Bish Nath Prasad*, B. R. 11 of 1923=5 L. R. Rev. 85=1923 R. C. 641=10 R. and Cr. L. J. 126.

<sup>4</sup> *Param Hans Man v. Dasrath Man*, 43 All. 445=19 A. L. J. 292=2 L. R. Rev. 161=7 R. and Cr. L. J. 271; *Sher Alam Khan v. Muhammad Said Khan*, III U. D. 123.

<sup>5</sup> *Sher Alam Khan v. Muhammad Said Khan*, III U. D. 123=5 R. and Cr. L. J. 17; *Param Hans Man v. Dasrath Man*, 43 All. 445, followed in *Nathan v. Harbans Singh*, 1930 A. L. J. 352.

<sup>6</sup> *Mithoo v. Chaturi*, V U. D. 478=4 L. R. Rev. 251=1923 R. C. 30=9 R. and Cr. L. J. 257.

<sup>7</sup> *Daryao Singh v. Gainda*, III U. D. 75=4 R. and Cr. L. J. 25.

<sup>8</sup> *Lalta Prasad v. Kasturi Singh*, XI U. D. 47.

<sup>9</sup> *Lalta Prasad v. Kasturi Singh*, XI U. D. 47.

of Act II of 1901) in that portion as well as in the major portion of his holding which was used for purely agricultural purposes.<sup>1</sup>

*Singhara tank*—land includes land covered by water for the purpose of growing *singhara* or other produce.<sup>2</sup> The word "similar" has been omitted; so that now land covered by water for the purpose of growing any produce will come within the definition.

12. *Subsection (11). Landholder.*—Landholder and tenant were defined in section 3(6), *Agra Act*. Subsections (11) and (23) now reproduce that definition with variations. An assignee of rent is for the purposes only of the two Chapters VII (sections 127 to 154, relating to payment and recovery of rents) and XIII (sections 235 to 240, relating to compensation and penalties) a landholder. A person who has lost the proprietary or other interests by virtue of which rents became payable to him, is not a landholder. The first portion relating to assignees of rent affirms the view of the Board of Revenue in certain decisions<sup>3</sup> and overrides the contrary decisions.<sup>4</sup>

It will be better to deal with the subject under subsection (23) relating to tenant.

13. *Subsection (12.) Landlord.*—The first sentence reproduces the definition of the term in section 3(6), *Agra Act*. The rest is new. In the *Oudh Act* a landlord was defined as "any person to whom an underproprietor or tenant is liable to pay rent," in effect the same as the definition of landholder. An underproprietor is now excluded from the conception of landlord. An underproprietor pays rent to his landholder. A sub-proprietor in *Agra* or *Oudh*<sup>5</sup> is a landlord.

Section 76, *United Provinces Land Revenue Act*, refers to mahals in *Agra* in which superior and inferior proprietary rights exist, and

<sup>1</sup> *Sampat Kumar Singh v. Ram Lagan*, XII U. D. 86=12 L. R. Rev. 165, is not reconcilable with *Hartans Singh v. Kishun Sahas*, II U. D. 19, in which, however, there was a huddle that the extra land was let as fallow and not for agricultural purposes.

<sup>2</sup> This gives effect to *Ram Singh v. Kanhaya*, B. R. 13 of 1914=I U. D. 83; *Mool Chand v. Chetree*, I N.-W. P. 175; see also, *Girdhars v. Monim Baks*, XIV U. D. 280.

<sup>3</sup> *Ram Chand v. Chimman*, B. R. 2 of 1900; *Kijayat-ullah Khan v. Ali Begam*, B. R. 5 of 1893; *Man Rai v. Jas Ram*, 15 A. W. N. 77; *Ram Prasad v. Basdeo Sahai*, IX U. D. 145=9 L. R. Rev. 300; *Ram Nath v. Mohan Singh*, VI U. D. 208=5 L. R. Rev. 252=8 R. D. 193; *Sukhdeo Das v. Panna Lal*, VIII U. D. 52=8 L. R. Rev. 210.

<sup>4</sup> *Rustam Khan v. Lal Bishnath Singh*, B. R. 3 of 1897; *Makbul Husain v. Rajendra Narain*, 12 O. C. 288=4 I. C. 780; *Ganga Prasad v. Chandrawati*, 7 All. 256=4 A. W. N. 356, (not followed in *Kanhai Ram v. Sukh Deo*, 12 A. L. J. 98); *Antu Singh v. Ajudhia*, 9 All. 249.

<sup>5</sup> *Ram Harakh v. Radhika Dutt*, 1939 O. W. N. 186=1939 R. D. 97=1939 A. I. R. Oudh, 99.

empowers the Settlement Officer to engage with the superior proprietor and to make a sub-settlement with the inferior proprietor.

A sub-proprietor in Agra means a person who possesses a subordinate, but heritable and transferable right, and whose name is recorded in the register of proprietors as such: and includes such persons as a rent-free grantee to whose right the provisions of sections 185 and 186 of the Agra Tenancy Act, 1926 (sections 191, 192 of the present Act) apply, a gawandhdar, an arazidar, or other like person owning those rights. The conditions mentioned above are essential for a sub-proprietor<sup>1</sup> He must have a subordinate proprietary right. Persons declared to hold certain *mir* lands in their own cultivation at a privileged rent payable to a temple to which the land belongs are not sub-proprietors<sup>2</sup>. Under a permanent lease passed by *A* to *B*, the rights of a superior proprietor were retained by *A*, who was paid a premium and was to receive a yearly rent, while *B* was given heritable and transferable rights, *B* is a sub-proprietor.<sup>3</sup>

Where superior and inferior proprietors exist, the Land Revenue Act contains the following provisions.

Section 75 speaks of several persons in a mahal possessing separate heritable and transferable proprietary interests of different natures.

Under the Oudh Sub-settlement Act, 1866, sub-settlements were made with under-proprietors and section 2, etc, indicated the classes of under-proprietors who were entitled to have sub-settlements made with them. See the notes in my commentary under section 4 United Provinces Land Revenue Act.

Superior and inferior proprietors are landlords, but not under-proprietors.

Owners of specific plots of land in a mahal are also landlords.

14. *Subsection (13). Lease.*—Reproduces section 3(13), Agra Act, constituting counterpart for *kabuliati*. The inclusion of *kabuliati* or counterpart in a lease gives expression to the prevailing practice and is in conformity with the Registration Act, and makes the High Court rules under section 105, Transfer of Property Act, inapplicable to this Act.

15. *Subsection (14). Pay.*—Reproduces section 3(5), Agra Act.

16. *Subsection (15). Permanent lessee in Oudh.*—His lease must be heritable, but non-transferable, and his name must be entered in register (b) or (c) of section 32, United Provinces Land Revenue Act.

17. *Subsection (16). Recorded*—i. e., in a register mentioned in section 32, Land Revenue Act.

18. *Subsection (17). Registered.*—The definition is a combination of the definition contained in the Agra and Oudh Acts. Section 3(10) of the Agra Act simply said that "registered" includes attested under the

<sup>1</sup> *Wali Muhammad v. Mahara of Nahan*, 1938 A. L. J. (Rev.) 24.

<sup>2</sup> *Gatsaran Nurayanji Maharaj v. Jagat Singh*, XVII U. D. 133.

<sup>3</sup> *Lachman Das v. Sandal Singh*, XIV U. D. 488—14 L. R. (Rev.) 583.

provisions of section 127 " of that Act, section 3(14) Oudh Act, did not have the words " and includes attested under the provisions, etc."

19. *Sub-section (18). Rent.*—Reproduces with variations the definitions contained in the Agra and Oudh Acts. The words "payable on account of the use or occupation of land or on account of any right in land" have been substituted for "to be paid or delivered by a tenant for land held by him," and the words "and in Chapter VII.....sayar" for "and in Chapter IX includes a sayar as defined below" (which last substitution makes no material change). In section 3(5) of the Oudh Act, rent meant "the money or the portion of the produce of land payable on account of the use or occupation of land, or on account of any right in land or on account of the use of water for irrigation" (the last portion now falls within the definition of sayar; "or partly in cash and partly in kind" is an addition.

The words "by a tenant" have been omitted so as to include payments by under-proprietors within the expression 'rent.'

*Bhaoli* and *batai* rents are or form portions of the produce of the land and are therefore rents. If a land is allowed to be fallow, but not in the ordinary course of agriculture, or is used not for growing crops but for making bricks, the landholder can claim damages but not the *bhaoli* or *batai* rent, or a portion of what the land would produce.<sup>1</sup> A contrary view seems to have been taken by Ryves J. in *Indar Pal Singh v. Bafati*.<sup>2</sup>

The payment or delivery may be in cash or kind, *e. g.*, a share of the fruits or wood of a grove of trees,<sup>3</sup> a number of mangoes, to be delivered annually.<sup>4</sup> Rendition of service is neither payment nor delivery. Hence land held on services is not let for rent. Acts XVIII of 1873 and XII of 1881 included rendition of services in the definition of rent.

Rent is in respect of land or other objects mentioned. As *abadi* land is not included in either, whatever is paid for its occupation is not 'rent' within the meaning of the Act, nor is it a cess,<sup>5</sup> though it is rent in the ordinary sense of the term.

The *wajib-ul-arz* of a mauza entitled the zamindars to take certain dues, by way of cess, from tenants, *viz.*, half the fruit and wood of trees, five seers of poppy seed from each Koeri tenant, one pot of sugarcane juice from each tenant, one rupee from each tenant pressing sugarcane in a mill, etc. These dues were stated to be customary. It was held by a Bench of three Judges that these dues did not constitute rent in respect

<sup>1</sup> *Sri Krishna Lal v. Ghulam Subhan*, 17 O. C. 55=23 I. C. 460.

<sup>2</sup> 20 A. L. J. 777.

<sup>3</sup> *Badri Prasad v. Bhimsen*, B. R. 2 of 1892=13 A. W. N. 1; *Mahabir v. Sheo Dihal*, 15 A. W. N. 320; *Murat v. Kesho Das*, 15 I. C. 27; *Raghubar Rai v. Madho*, 15 A. L. J. 623.

<sup>4</sup> *Nobo Tarini v. Gray*, 14 W. R. 7.

<sup>5</sup> *Amir Husain v. Gobind*, 19 A. W. N. 77; *Abdul Hai v. Nathua*, 1 A. L. J. 537.



of holdings but were based on custom ;<sup>1</sup> so a portion of the produce of a grove claimed by custom.<sup>2</sup>

A suit could lie for *bhusa* and *karbi* or its equivalent in money as arrears of rent, if recognised by custom.<sup>3</sup>

Money payable, according to custom, by non-agriculturist residents of a village on certain festive occasions, *e. g.*, marriage in the family of the zamindar, is not a cess, nor rent within the meaning of this Act, but rent due under an ordinary contract ;<sup>4</sup> so *kargahi* which is an impost upon weavers ;<sup>5</sup> so profits realised by the *ijaradar* of a *mela* held on agricultural lands from stall-holders.<sup>6</sup>

A tenant took A as a partner on the terms of sharing profits and payment of half the rent to the tenant. The amount to be paid by A for rent is not rent payable to the tenant ;<sup>7</sup> so a *malikana* reserved to a superior from an inferior proprietor.<sup>8</sup>

Owners of mahals who are entitled to share in the produce of a tank in one of the mahals do not claim rent when asking for their share of the produce.<sup>9</sup>

A sum in addition to an agreed rent to be paid by a tenant of land may be sued for in a Civil Court.<sup>10</sup>

A premium payable on a lease is not a periodical payment, as the word rent connotes,<sup>11</sup> but there is no reason to suppose that it is excluded from the conception of rent in this definition. *Nazrana* or premium is included in the term *rent* ;<sup>12</sup> A lease for a *nazrana* and annual payments is for rent as regards both.<sup>13</sup>

20. *Sub-section (19).—Revenue.* This definition is new so far as *Agra* is concerned. The *Oudh Act* had a definition.

21. *Sub-section (20).—Sayar.* The definition reproduces that of section 3(4) of the *Agra Act*, with the omission of the words “ to a landholder ” and “ or the like.” Since rent includes, for certain purposes, *sayar* as in sub-section (18), whatever item of *sayar* does not fall within

<sup>1</sup> *Sheoamber v. Collector of Azamgarh*, 34 All. 358=9 A. L. J. 431.

<sup>2</sup> *Ablakh Rai v. Ram Saran*, 12 A. W. N. 10 (1892).

<sup>3</sup> *Panna Lal v. Unis Ali*, XI U. D. 187=14 R. D. 634.

<sup>4</sup> *Sughra v. Narotam*, 11 Ind. C. 217. See *Chunni v. Rafiunnissa*, 1931 A. L. J. 411=12 U. D. 108 (H. C.).

<sup>5</sup> *Maharaja of Benares v. Sultan*, II U. D. 234.

<sup>6</sup> *Secretary of State v. Karuna Kant Chowdhry*, 35 Cal. 82, (F. B.).

<sup>7</sup> *Ramnath v. Sikhdar Singh*, 40 All. 51=4 Rev. and Cr. L. J. 15 ; *Mata Gulam Singh v. Chatter Singh*, 24 A. L. J. 585=7 L. R. Rev. 56=1926 R. C. 236.

<sup>8</sup> *Muhammad Mumtaz Ali Khan v. Wazir Khan*, 7 O. C. 10.

<sup>9</sup> *Sanwalia v. Nathi Lal*, 47 All 920=23 A. L. J. 560=VI U. D. (H. C.) 520=(1925) R C 373.

<sup>10</sup> *Maharaj v. Abdulla*, 9 R. and Cr. L. J. 271.

<sup>11</sup> *Dina Nath v. Deb Nath*, 13 W. R. 307.

<sup>12</sup> *Jai Dayal v. Kesho Prasad Singh*, 52 I. C. 409=3 U. D. 117.

<sup>13</sup> *Jai Dayal v. Kesho Prasad Singh*, 52 I. C. 409=1 U. P. L. R. (B. R.) 24.

the definition, is not rent, *e. g.*, *purjot*, as it is in the nature of ground rent for the use of land,<sup>1</sup> weightment dues constituted *sayar* and a claim for them was one for rent.<sup>2</sup> In Oudh such dues did not come under rent.<sup>3</sup> The basis of the Allahabad High Court view was that the definition of *sayar* was not exhaustive but only illustrative, but Mr. Knox in *Asfia v. Dukhia* (XVII U. D. 371) doubted although he accepted it. The definition in sub-section (20) is not contrary to the Allahabad view.

The rent reserved in a lease for cutting grass and grazing cattle on a piece of land was held to be and is rent,<sup>4</sup> but not for grazing land in cantonments.<sup>5</sup> The latter is bad law now.

The inclusion of the word *licensee* should be noted. Land on which an isolated tree stands is not land or the holder of it a tenant. The planter of an odd tree with the landholder's consent on the understanding that he would deliver half of the wood, when cut, to the landholder, is a licensee.<sup>6</sup> Payments to be made by him on account of the right of gathering produce, forest rights, fisheries, etc. constitute *sayar*. This overrides, *quod hoc*, *B. and N. W. R. v. Bandhu*.<sup>7</sup>

*On account of the right of gathering produce.*—This seems to be wide enough to include payments to be made for gathering the produce of scattered trees which do not constitute a grove,<sup>8</sup> or for gathering the grass grown within a compound.<sup>9</sup>

*Forest rights, e. g.*, lac, myrabolam, etc.

Tanks used for growing *singhara* and the like fall within the definition of land, and what is payable on account of their use is rent as defined in sub-section (18). Tanks not used for agricultural purposes are not land, and whatever is paid or payable on account of their use is not rent but *sayar*.

<sup>1</sup> *Asfia v. Dukhia*, XVII U. D. 371=1936 R. D. 520.

<sup>2</sup> *Suraj Pal Singh v. Jawahar Singh*, 1933 A. L. J. 521=1933 A. I. R. All. 310=XIV U. D. H. C. 69=14 L. R. Rev. 202=17 R. D. 182; *Mahendra Pal Singh v. Ganga Sahai*, XIV U. D. H. C. 128=14 L. R. Rev. 758; *Gulzari Lal v. Phool Chand*, XVII U. D. H. C. 7=1936 R. D. 14; *Noor Muhammad v. Lalloo*, 1939 A. L. J. 890=XX U. D. (H. C.) 70=1939 R. D. 389=1939 All. 614.

<sup>3</sup> *Dulare v. Umrao*, 1 O. C. 103; *Bashir Ahmad v. Lal Narain Partab Bahadur*, XVI U. D. 662.

<sup>4</sup> *Manohar Lal v. Gouri*, 12 A. L. J. 36=22 I. C. 16; *Ram Prasad v. Benares Cotton and Silk Mills*, 11 L. R. Rev. 110=1930 A. L. J. 550=1930 A. I. R. All. 399=XI U. D. (H. C.) 157=52 All. 566; *Cantonment Board v. Kishun Lal*, 1934 A. L. J. 409=1934 A. I. R. All. 609=18 R. D. 275.

<sup>5</sup> *Auseri Lal v. Mulhan*, 22 A. L. J. 339.

<sup>6</sup> *Sachla v. Ram Sakal Rai*, XVI U. D. 466.

<sup>7</sup> 31 All. 342=6 A. L. J. 400.

<sup>8</sup> This is opposed to *The Secretary of State v. Bindraban*, 32 All. 342=1 A. W. N. 162.

<sup>9</sup> *Ram Prasad v. Benares Cotton and Silk Mills*, 52 All. 566=XI U. D. (H. C.) 157.

*Use of water for irrigation.*—Irrigation may be from an artificial source, such as a tank, canal, etc. Irrigation from natural sources is not included now.

22. *Sub-section (21).—Sir-holder.* The possession of *sir* is essential. *Qu.* Whether mere ownership without physical possession is enough? The persons who may be *sir*-holders are recorded (as defined in cl. 16) landlords, underproprieters and permanent tenure-holders. A mere landholder as such, who is not a landlord etc. cannot be a *sir*-holder, *e. g.*, a thekadar or a mortgagee.

23. *Sub-section (22)—Sub-tenant* This definition reproduces with variations that in section 3(7), Agra Act. The words "a grove-holder or from" have been inserted between "from" and "a rent-free grantee;" and the last portion "or from grantee at a favourable rate of rent and by whom rent is or, but for a contract express or implied, would be payable" are new. The words "who is liable to have rent fixed under section 187" have not been re-enacted. Now it is made clear that a person holding land from a grantee (rent-free or at a favourable rate of rent) is a sub-tenant, provided he is or would be liable to pay rent, and it is not necessary that the condition as to liability to have rent fixed under the resumption chapter should exist. The ruling in *Bhikari v. Ram Bharose*<sup>1</sup> will now be bad law.

A sub-tenant is a person who holds land from another possessing therein the interests of a tenant, *e. g.*, occupancy, ex-proprietary, hereditary or non-occupancy tenant, and hence an occupier or cultivator of *sir* land though called a *shikmi* is not a sub-tenant. A permanent tenure-holder, although technically called a tenant, is practically the real proprietor. Hence a person holding from him is a tenant and not a sub-tenant.<sup>2</sup> A thekadar is not a tenant and a person holding from him is not a sub-tenant. The fact that a tenant-in-chief does not execute the decree obtained by him against a sub-tenant does not make the latter the tenant-in-chief.<sup>3</sup>

Tenant means the real and genuine tenant and this has to be borne in mind specially in two classes of cases. *Patwaris*, in order to circumvent their service rules, have their agricultural holdings recorded in the name of some relation, friend or dependant, as tenant, with their own names sometimes as sub-tenant. Revenue Courts do not encourage this sort of subterfuge, and look upon the person whose name is entered as the real tenant, specially if after ceasing to be a *patwari* the latter allowed his name to be entered as sub-tenant and has not for a considerable time taken steps to have the entry corrected.<sup>4</sup>

In the other class of cases, in order to prevent the acquisition of superior tenancy rights in the actual cultivators, zamindars have a

<sup>1</sup> XVI U. D. 330.

<sup>2</sup> *Badal v. Aminuddin*, 13 L. R. Rev. 110=XIII U. D. 119.

<sup>3</sup> *Rustam v. Sunder*, XII U. D. 50.

<sup>4</sup> *Patwari v. Sunder*, XVI U. D. 315.

large area of land entered as the tenancy holding of some female or other relation, and the cultivators are shown as sub-tenants. The revenue courts look askance at this and treat the actual cultivators as tenants-in-chief and not as sub-tenants.

In such a case, the cultivator may be estopped from asserting a tenancy-in-chief in himself, by payment for a long time of rent to the person recorded as tenant.<sup>1</sup>

Where a proprietor just before his estate is taken over by the Court of Wards grants a long lease to a servant of land part of which is in the tenancy-in-chief of A, with a view to reduce A to the position of a sub-tenant and to cheat the Court of Wards of the actual rents paid, and the lease is unregistered, it is invalid, and A remains the tenant-in-chief.<sup>2</sup>

A permanent lease at a nominal rent was granted to the wife and mother of the zamindar, they being *parda ladies*. There was a pretence of separate receipt of rent *bahis* and issue of receipts on behalf of the ladies as occupancy tenants and institution of arrears of rent suits in their names. The ladies were at the most *thekadars* or assignees of rent, and the real tenants were the persons entered as their sub-tenants who cultivated the land, and not the ladies. The device was obviously adopted to prevent the accrual of occupancy rights in the actual cultivators.<sup>3</sup>

Where the day after the execution of a perpetual lease of some plots in favour of a female member of a joint Hindu family the zamindari is said to be sold to the other members of the family, the lease is to be regarded with extreme suspicion, even if suits are brought in the name of the female member while the family is joint. If after the disruption of the family the name of the female is removed, the actual cultivators cannot be regarded as sub-tenants of the female lessee.<sup>4</sup>

Where after ejectment of certain tenants a lease, found to be fictitious in its nature and operation, was granted to the manager of the estate, and the tenants were restored to possession, the tenants continue to be tenants-in-chief and are not sub-tenants of the lessee, although they had passed *kabuliats* in the name of the lessee.<sup>5</sup>

Where a land is recorded as the *khudkashi* of A, and is really so, an entry that B is sub-tenant of that land is wrong.<sup>6</sup>

<sup>1</sup> *Ram Auidh Prasad v. Purshottam*, 9 L. R. Rev. 208=IX U. D. 45=1928 R. C. 103=12 R. D. 290.

<sup>2</sup> *Sher Singh v. Bimouri Singh*, XII U. D. 168.

<sup>3</sup> *Swarath Singh v. Makund Das*, XX U. D. 105=1938 R. D. 827; *Nawazish Ali Khan v. Umrao*, XX U. D. 361=1939 R. D. 414=1939 A. L. J. (B. R.) 97; *Aditya Narain Singh v. Janqi*, XX U. D. 292=1939 R. D. 13.

<sup>4</sup> *Mochna Kuar v. Samaru*, XX U. D. 301=1939 R. D. 12.

<sup>5</sup> *Nageshar Sahai v. Mohan*, 105 I. C. 103=4 O. W. N. 305=1927 A. I. R. Oudh 529=11 R. D. 377.

<sup>6</sup> *Mutra v. Radha Patti Singh*, XIV U. D. 346=14 L. R. Rev. 672=17 R. D. 806.

In spite of a mortgage to a *shikmi* in actual cultivation by a co-sharer of his share of the *sir*, no mutation of proprietary rights taking place and the *sir* continuing to be recorded as the *sir* of the mortgagor and his co-sharers, the *shikmi* remains a *shikmi* and not the holder of *khudkasht* of a mortgagee.<sup>1</sup>

A mortgagee from the tenant-in-chief is not his sub-tenant. If his mortgage is unregistered, but he has possession, his deed is evidence as to the nature of his possession.<sup>2</sup>

If the mortgagor of a holding, mortgaged before the passing of the Rent Act of 1873, when such mortgages were valid, died heirless, after 1902, rights of occupancy and the mortgage both became extinguished, and the mortgagee became a tenant.<sup>3</sup>

The definition also enacts that a tenant who holds land from a rent-free grantee is only a sub-tenant. The omission of the words "who is liable to have rent fixed under section 187 of the Act of 1926" removes anomaly and renders useless the rulings to the contrary. All rent-free grantees whose cases did not fall under section 185 or section 186 of the Act of 1926 were liable to have rent fixed, and the persons holding land from them were therefore sub-tenants.<sup>4</sup> This rendered useless the rulings under Act II of 1901 which held that tenants under rent-free grantees were tenants-in-chief and could acquire occupancy rights.<sup>5</sup>

A person holding under an idol rent-free grantee (probably the grant being charitable and irrevocable) was not a sub-tenant, as the idol could not be assessed to rent as a tenant.<sup>6</sup>

Often an express contract of sub-tenancy is not proveable and a contract has to be inferred from circumstances. Where the landholder sublets a holding over the head of a sitting tenant and the latter accepts the position by paying rent to the lessee, he assumes the position of a sub-tenant.<sup>7</sup>

Where a landholder wrongly ejected a tenant and took possession of his holding, the remedy of the tenant was clearly under section 183 but if

<sup>1</sup> *Dip Narain Singh v. Chandu Shukla*, 15 L. R. Rev. 166=XV U. D. 116=18 R. D. 119.

<sup>2</sup> *Jit Singh v. Shah Munir*, 15 L. R. Rev. 90.

<sup>3</sup> *Mahabal Singh v. Radha Raman*, II U. D. 258 ; *Parshotam Das v. Deonandan Singh*, III U. D. 305.

<sup>4</sup> *Amanat Khan v. Bharosa*, B. R. 2 of 1932=XIII U. D. B. R. 15=13 L. R. Rev. 237. But not if they had completed 12 years of occupation under the grantee prior to 7th September, 1926 ; *Mangroo v. Ambika Prasad*, 14 L. R. Rev. 912=15 L. R. Rev. 172=XV U. D. 13.

<sup>5</sup> *Ajita v. Gobind Prasad*, B. R. 10 of 1904 ; *Gokul Singh v. Dalip Singh*, III U. D. 120 ; *Kundan v. Ram Sahai*, B. R. 8 of 1934=XV U. D. (B. R.) 27, and numerous other cases cited in note (i) in Appendix VII at the end of the book.

<sup>6</sup> *Khachera v. Rudha Nritya Behari*, XIII U. D. 199=14 L. R. Rev. 386.

<sup>7</sup> *Shridhar v. Maha Devi*, XVII U. D. 384=1936 R. D. 522 ; *Mata Prasad v. Jadu Nath*, XX U. D. 73=1938 R. D. 783=1938 A. L. J. (B. R.) 80. See also IX U. D. 45.

the period of limitation for a suit under that section had expired an attempt was often made to eject him as trespasser. This is not permissible.<sup>1</sup> In *Ganga Narain v. Manik Lal*,<sup>2</sup> a futile distinction seems to be drawn by a judge between wrongful dispossession and taking possession without the tenant's consent, and on the basis of this distinction a suit to eject as sub-tenant in the latter case was held maintainable. Where a zamindar occupied the land of his occupancy tenant for more than 12 years without any rent being fixed, his occupation was not as *shikmi* but as trespasser, and the occupancy rights were held to be extinguished.<sup>3</sup>

Whether a landholder in possession of his tenant's holding is a sub-tenant or is in wrongful possession depends on the facts and circumstances of each case. Unless the circumstances prove him to be a sub-tenant, he is a landholder who has dispossessed his tenant in contravention of the Act, and can only be proceeded against under section 183.<sup>4</sup> Where the sole zamindar has been in possession of an occupancy tenant's holding for five years after his death, the presumption is that he is in possession as zamindar and not as sub-tenant, and since his heir did not recover possession within limitation, his right and remedy are barred. He cannot be sued as a trespasser.<sup>5</sup> Where a zamindar usufructually mortgages a tenant's holding representing it to be his own *sir* and *khudkash*, and the mortgagee takes possession, the tenant's remedy is not a suit to eject the mortgagee as sub-tenant, because there was no contract of tenancy made but a suit under section 180 or 183.<sup>6</sup>

The fact that the patwari papers show the zamindar as *shikmi* is immaterial.<sup>7</sup> Payment of rent or an agreement as to tenancy has to be proved.<sup>8</sup> Entry of a person's name as *shikmi* over the land of another merely proves occupation ; whether he is a sub-tenant depends on circumstances such as payment of rent, etc.<sup>9</sup>

<sup>1</sup> *Himmat Singh v. Chummi*, B. R. 6 of 1912 ; *Ghurpat Sahi v. Mahabir*, 113 I. C. 817=X U. D. (H. C.) 170=10 L. R. Rev. 201 ; *Gaya Sahu v. Mendhai*, II U. D. 31 ; *Chandika Prasad v. Bhairon Prasad*, I U. D. 34=30 I. C. 811, *Rasal Singh v. Behari*, B. R. 6 of 1925. But see note 8 to section 180.

<sup>2</sup> 1927 R. C. 343.

<sup>3</sup> *Deo Raj v. Sita Ram*, 12 L. R. Rev. 60.

<sup>4</sup> *Himmat v. Chummi*, B. R. 6 of 1912 ; *Chandika Prasad v. Bhairon*, I U. D. 34 ; *Salig Ram v. Ganga Prasad*, IX U. D. 147.

<sup>5</sup> *Sarabjit Das v. Manbodh*, XVI U. D. 397.

<sup>6</sup> *Lochan Rai v. Chikuri*, XVI U. D. 544.

<sup>7</sup> *Himmat Singh v. Chummi*, B. R. 6 of 1912 ; *Deo Raj v. Sita Ram*, 12 L. R. Rev. 60.

<sup>8</sup> *Gaya Sahu v. Mendhai*, II U. D. 31.

<sup>9</sup> *Hulas Singh v. Jit Singh*, B. R. 6 of 1912=I U. D. 218=1 O. L. J. 54=25 I. C. 177 ; *Sauwal Singh v. Prag Dat*, 1 O. L. J. 517=26 I. C. 86=I U. D. 220, *Ram Ghulam v. Diwari Lal*, 1939 A. L. J. (B. R.) 2.

The plaintiff in a suit to eject a person as sub-tenant, has to prove the sub-tenancy<sup>1</sup> and if the defendant is really the mortgagee in possession he cannot be ejected as a sub-tenant.<sup>2</sup> So, if he is really a co-tenant with the plaintiff, the land having been in the tenancy of an ancestor of the parties, and there being no evidence

Where a lambardar who had no share in a patti but was entered as statutory tenant of some plots in it, sued one of the pattidars, who was entered as the sub-tenant of the land, for ejectment as non-occupancy tenant, and the pattidar denied his sub-tenancy and the statutory tenancy of the plaintiff, the latter ought at any rate to prove the sub-tenancy if not also his own statutory tenancy.<sup>3</sup>

Payment of rent by a sub-tenant direct to the zamindar does not prove that the tenant-in-chief has severed his connection with the holding.<sup>4</sup> Unless it is proved that the interest of the tenant has been extinguished in one of the ways mentioned in section 45, collection of rent by the zamindar will be deemed to be as agent of the tenant, and the person in occupation will be treated as a sub-tenant and liable to ejectment as such.<sup>5</sup> Where an heir of a deceased tenant exists and the holding is in the possession of a sub-tenant, the latter remains so, in spite of a lease executed in his favour by the landholder.<sup>6</sup>

The entry is not an estoppel but evidence,<sup>7</sup> and it can be rebutted.

Patwari's papers often show *A* as a tenant, but *B* as *kabiz* or in possession. This may mean that *B* is in possession under some sort of arrangement with *A*, or that *A* has ceased to have any interest in the holding, *B* being the real tenant. The exact position of *B* has to be inferred from evidence or from circumstances.

Entry of *B*'s name as *shikmi* over the land of *A* certainly proves *B*'s possession. Does it prove *B*'s sub-tenancy? Since the entries in revenue papers are said to have presumption of truth—the author does not know of any Act or Enactment, other than sections 44 and 57 of the

<sup>1</sup> *Lal Muhammad v. Kishnu*, XV U. D. 420, *Rameshwar Prasad v. Khedan*, 1939 A. L. J. (B. R.) 65; *Kauleshar v. Sarju*, XVII U. D. 135; *Ram Ghulam v. Dwari Lal*, XX U. D. 119—1938 R. D. 850, *Mohib Ali v. Buchunu*, XX U. D. 1—1938 R. D. 753; *Rajbir v. Raghu Nandan*, XVII U. D. 136; *Lochan Rai v. Chikuri*, XVI U. D. 544; *Daljit Singh v. Kauleshar Prasad*, XVI U. D. 551, *Naim Narain Singh v. Ram Acharaj*, XVII U. D. 329—1936 R. D. 479.

<sup>2</sup> *Rameshwar Prasad v. Khedan*, 1939 A. L. J. (B. R.) 86.

<sup>3</sup> *Anand Lal v. Lakshmi Chand*, XIV U. D. 61—14 L. R. Rev. 235.

<sup>4</sup> *Kangul Singh v. Sukhundan Singh*, 2 L. R. Rev. 194; *Hazari v. Durga*, 4 L. R. Rev. 404—10 R. and Cr. L. J. 59—V U. D. 520—1923 R. C. 152—7 R. D. 323. In this case payment of rent by the sub-tenant was due to a private arrangement with the tenant.

<sup>5</sup> *Thakuri v. Shib Lal*, 9 I. L. R. Rev. 17—IX U. D. 16.

<sup>6</sup> *Har Pal v. Sital Dtn*, XII U. D. 76.

<sup>7</sup> See *Ali Husain Khan v. Maniyan*, VII U. D. 14—(1926), R. C. 248, but see *Gopi v. Jaisri*, VI U. D. 473—1925 R. C. 480.

Land Revenue Act, and a mere patwari's entry does not come under either which warrants such a presumption—it has been held that the entry must be presumed to be true, and it is for *B* to disprove it.<sup>1</sup> This only means that the entry is *prima facie* evidence, amounting at times to estoppel, against *B*. In such cases, *B* usually pleads a tenancy-in-chief in himself; but *A* is the recorded tenant-in-chief. *B* has to show that the entry of *A*'s name as tenant-in-chief was wrong or that *B*'s tenancy terminated under section 45. It is open to *B* to disprove the entry of his name as sub-tenant by showing that he never paid any rent to *A* and was closely related to him,<sup>2</sup> or that he has obtained a decree from a competent court declaring his status to be more than a sub-tenant or as a proprietor,<sup>3</sup> or a decree for rent has been passed against him as the tenant-in-chief.<sup>4</sup> A suit under section 86 of the Act of 1926, present section 175, could not be maintained even if the defendant was entered in the patwari papers as a sub-tenant, if there was no proof that the defendant was admitted as a sub-tenant or paid or agreed to pay rent, specially when the latter claimed by adverse possession exceeding 12 years.<sup>5</sup>

If a person alleging himself to be tenant-in-chief, is proved not to be so, or to have admitted the cultivator to tenancy, the cultivator is not his sub-tenant.<sup>6</sup>

Where the alleged sub-tenant has been proved to be the mortgagee in possession of lands in a holding and because of what was probably an unauthorised entry by the patwari of his name as the sub-tenant, and the mortgagor sues to eject him as a sub-tenant, and the latter contests the position, the plaintiff must prove that he admitted the defendant as a sub-tenant.<sup>7</sup> So if a recorded sub-tenant in possession has been admitted to be the tenant-in-chief by the zamindar, and this position is more or less definitely recognized in a suit for ejectment brought by the recorded tenants, in a subsequent proceeding by the latter to eject the

<sup>1</sup> *Umed Ali v. Sada Ullah*, IV U. D. 221; *Gopi Kuar v. Jasri*, VI U. D. 473; *Iswar Din v. Dhani*, VI U. D. 166=1925 R. C. 480; *Muhammad Ishaq v. Sardar Khan*, XI U. D. 92=12 L. R. Rev. 103; *Haswa v. Bishwa Nath*, 11 L. R. Rev. 368; *Ashuj Ali v. Ajodhya*, 10 R. and Cr. L. J. 129; *Siddiquinissa v. Jan Mahomed*, IV U. D. 530=7 R. and Cr. L. J. Rev. 113, *Ram Yad v. Tribhuvan*, III U. D. 371; *Bhola Nath v. Kandhaya Lal*, V U. D. 432=4 L. R. Rev. 190=9 R. and Cr. L. J. 213.

<sup>2</sup> *Gaya Sahu v. Mendhar*, II U. D. 31; *Hulas Singh v. Jit Singh*, I U. D. 218=25 I. C. 177=B. R. 6 of 1912.

<sup>3</sup> *Samwal Singh v. Prag Dat*, I U. D. 220.

<sup>4</sup> *Ram Audh Prasad Singh v. Purshotam*, IX U. D. 45.

<sup>5</sup> *Ram Dhari Rai v. Mubair Singh*, XII U. D. 265, *Patru v. Sheo Harakh Singh*, XIV U. D. 164=14 L. R. 435.

<sup>6</sup> *Pateshri Prasad v. Tilak Lal*, 14 L. R. Rev. 475=XI V U. D. 239.

<sup>7</sup> *Lachmi v. Ghuran*, 15 L. R. Rev. 616=XV U. D. 370.



defendants as sub-tenants, the plaintiffs must prove that they admitted the defendants as sub-tenant.<sup>1</sup>

Where sub-tenancy is denied and not proved, and the plaintiff admits that the defendant pays rent direct to the zamindar and cannot explain how the defendant's tenancy arose, his suit for ejectment fails.<sup>2</sup>

Where the evidence of the zamindar and the patwari proves the entry of *A's* name as tenant-in-chief and of *B's* name as sub-tenant to be wrong, and that *B* was the person admitted to the tenancy-in-chief, the suit fails.<sup>3</sup>

Where the recorded tenant-in-chief had lost possession long ago and had not paid rent for a considerable term and there was no proof of any admission by him of the defendant as sub-tenant, his suit for ejectment of the latter fails.<sup>4</sup>

Where an occupancy tenant was out of possession for over 12 years, and the person alleged as *shikmi* was frequently recorded as *labic* and paid rent direct to the landlord, and the tenant was not proved to have collected rent from him, the tenant's interest was held to be extinguished.<sup>5</sup>

Where in spite of the defendant's willingness to be ejected, the court finds another person to be in possession as statutory tenant, it should dismiss the suit for the ejectment of the defendant as sub-tenant.<sup>6</sup>

In a suit in which *A* sues *B* as sub-tenant, and *B* denies this status, the landholder should be made a party.<sup>7</sup>

The first thing is to require proof that *A's* tenancy was never real or that it has come to an end as provided by the Act.<sup>8</sup>

Where a tenant allows a relation to share in cultivation with him a sub-tenancy is not necessarily inferred.<sup>9</sup>

A sub-tenant after the end of the term of his sub-lease remains a sub-tenant and cannot acquire occupancy rights to the prejudice of or

<sup>1</sup> *Dil Ram v. Sheo Gobind*, XV U. D. 477.

<sup>2</sup> *Bhola v. Jagdeo*, XIV U. D. 185=14 L. R. Rev. 420.

<sup>3</sup> *Dau Dayal v. Dulhi*, XIV U. D. 529, *Nanku v. Thagai*, 15 L. R. Rev. 312.

<sup>4</sup> *Bhanduti v. Gaya Din*, 15 L. R. Rev. 595=XV U. D. 352, *Dhanroj v. Ram Raj*, XV U. D. 418.

<sup>5</sup> *Sukha v. Bhajan*, 14 L. R. Rev. 357=XIV U. D. 460.

<sup>6</sup> *Hanuman v. Lala*, XV U. D. 392=15 L. R. Rev. 640.

<sup>7</sup> *Ganga Din v. Ghazi*, 9 L. R. Rev. 188=1928 R. C. 75; *Muhammad Ishoq v. Sardar Khan*, XII U. D. 92.

<sup>8</sup> *Narain v. Kishen Kunwar*, V U. D. 511=10 R. and Cr. L. J. 48=4 L. R. Rev. 403=1923 R. C. 82; *Thakuri v. Shib Lal*, IX U. D. 16.

<sup>9</sup> *Gureharan v. Samant*, 4 L. R. Rev. 65.

in partnership with the tenant. He must go when the tenant-in-chief wishes him to go.<sup>1</sup>

The fact of a land being sub-let for 20 years or more does not make the sub-tenant the tenant-in-chief.<sup>2</sup>

24. *Sub-section (23). Tenant and landholder.*—Sub-sections (23) and (11) replace section 3(6) of the Agra Tenancy Act, and make important changes. We have already noticed the alterations in the definition of landholder. In Oudh, section 3(10) of the Rent Act contained the definition of tenant and section 3(11) of landlord. A sub-tenant is a tenant unless a contrary intention appears. What is actually intended to be conveyed by these words is not clear.

The word *tenant* as before, does not include a mortgagee of proprietary or under-proprietary rights; nor does it include a grove-holder, a rent-free grantee or a grantee at a favourable rate of rent. The definition of sub-tenant in subsection (22) however shows that a person holding from a grove holder, or rent-free grantee or grantee at a favourable rate of rent is a sub-tenant, if he is or would be liable to pay rent. Hence the words *except when a contrary intention appears* governs the whole of the sub-section following those words.

Nor does the word include an under-proprietor, a permanent lessee (as defined in section 3(15) and not every type of permanent lessee), or a *thekadar* except when and as otherwise expressly provided by the Act. The law before this Act was the same as regards under-proprietors and *thekadars*. Under the Oudh Act *thekadars* were tenants for purposes of certain sections of the Oudh Act mentioned in section 3(10).

Rent is, or but for a contract, express or implied, would be payable. The words imply that rent would be payable to the landholder unless there is a contract, express or implied, that no rent would be payable at all or to him. A curious construction was put on these words by Mr. Justice Knox in *Balli v. Naubat*,<sup>3</sup> under section 34 of the Agra Act of 1901.

(i) The person to whom rent, as above defined, is payable is the landholder, and he who has to pay it is a tenant. Therefore rent is the pivot on which the existence of the relation of landholder and tenant turns. If no rent is or would be payable, there is no such relationship, and the occupier is not a tenant. Hence a rent-free grantee who holds land on service tenure is not a tenant so long as the land is held on such tenure. A holder of *nankar* or any other kind of *muafi* land is similarly not a tenant.

(ii) Neither can an ordinary mortgagee of proprietary rights be called a tenant, as he has not to pay or deliver anything, although he be in possession, and hence he has been expressly mentioned as not a tenant. Very often, when a mortgagee is usufructuary

<sup>1</sup> *Debi Prasad v. Nazir Khan*, 14 L. R. Rev. 94=XIV U. D. 38.

<sup>2</sup> *Sukhdeo v. Abhiraji*, XVII U. D. 234=1936 R. D. 337.

<sup>3</sup> 9 A. L. J. 771=16 I. C. 120.

or is put in possession, a stipulation is made that he should pay the revenue due to Government and appropriate the balance of the receipts to his debt. Such a stipulation does not turn him into a tenant, for he pays revenue as the agent of the mortgagor. The terms of the mortgage may, however, alter the position. For instance, it may be provided that in lieu of the consideration the mortgagee is to remain in possession for a certain number of years at the expiration of which he is to vacate the land, and to have no further claim on the mortgagor. This is for all practical purposes a lease for a term of years, a *zar-i-peshgi* lease in fact, in which the rent for the period of the lease has been paid beforehand. It is not unusual to find in such contracts also a provision for payment of an annual sum to the mortgagor by the mortgagee, in which case, the contract creates a lease for a premium and an annual rent. A borrowed money from *B* and allowed *B* to take possession as tenant of certain plots of land at a fixed rent, which was to be set off against the interest. *B* is a tenant and not a mortgagee, and hence cannot be ejected as a trespasser after the mortgagee has been paid off<sup>1</sup>. If *B* had been a pure mortgagee his continuance in possession after the mortgage has been paid off would amount to trespass, and expose him to the remedy provided by section 180<sup>2</sup>. But an usufructuary mortgagee who is to remain in possession until his debt is paid out of the usufruct of the property or by the mortgagor is a mortgagee and not a tenant.

(iii) It will be noticed that both a landholder and a tenant are *persons*. According to the General Clauses Act a *person* includes any company or association or body of individuals, whether incorporated or not. It may be noted that this definition is identical with that contained in the Indian General Clauses Act, and, thereunder it has been held that a tribe or a class or a caste cannot be deemed to be a person who alone can prescribe for an easement under section 26, Limitation Act, as it is an indeterminate and fluctuating body incapable of prescribing.<sup>3</sup>

Hence in spite of the seemingly wide words of the definition, the word *person* cannot include an indeterminate and fluctuating body, where a person has to perform certain acts continuously for a period of time to acquire a right or status, for instance, occupancy right by 12 years occupation under section 11 of Act II of 1901 or the earlier Rent Acts. And it was so held that a fluctuating body of individuals such as a firm of partners could not acquire occupancy rights.<sup>4</sup>

This does not mean that a lease cannot be given or a tenancy cannot be created in favour of a number of named individuals, who are not incorporated. Such persons may be partners or sole partners

<sup>1</sup> *Jadu Nandan Lal v. Jag Nandan*, X U D 298.

<sup>2</sup> *Ram Lal Singh v. Achai Das Singh*, X U. D. 212.

<sup>3</sup> *Maharaj Bahadur Singh v. Gandauri Singh*, 2 P. L. J. 323, 331.

<sup>4</sup> *Cannon v. Kylash Chandra*, 25 W. R. 117.

in a firm and may constitute an association of individuals. All that the Patna case is authority for is that the firm as a *firm* cannot prescribe for occupancy rights. Of course if land was leased for cultivation to *A, B, C*, the partners for the time being in a firm, and no change in the constitution of the firm took place for 12 years, *A, B, C* acquired occupancy rights together.<sup>1</sup> Where only one of them, *A*, continued cultivation for 12 years, *B* and *C* having died or dropped out, *A* was under the Rent Act of 1859 held to have acquired occupancy rights.<sup>2</sup> Under Act II of 1901, since 12 years' occupation must have been by the same tenant, it followed that cultivation by *A, B* and *C* was not by the same tenant as cultivation by *A*, and the latter did not acquire occupancy rights.<sup>3</sup>

If after the ejection of *A, B, C* or after each change in the constitution of the firm, the zamindar created a fresh tenancy in favour of *A* or of *A* and another, *A* could not add the extra period of occupation to make up the 12 years in his favour.<sup>4</sup>

In connection with this a cognate matter may be noticed. *A* is a tenant. He cannot take *B* into partnership with him without the consent or acquiescence of the zamindar, so as to make *B* also a tenant of the latter. Hence *A* could acquire occupancy rights by 12 years' occupation, but *B* could not by any length of occupation,<sup>5</sup> unless the landholder consented to the admission of *B* to a share in the tenancy, in which case *B* could become an occupancy tenant on the lapse of 12 years after such admission or consent.<sup>6</sup> Even this was doubted for it was held that the tenancy of *A* was not the same as that of *A* and *B* and therefore *A* could not acquire occupancy rights by 12 years' occupation.<sup>7</sup>

Opinions differed as to whether the landholder could by consenting to an occupancy tenant taking a partner with him make the latter also

<sup>1</sup> *Laidley v. Gour Gobind*, 11 Cal. 501

<sup>2</sup> *Forbes v. Ram Lal*, 22 W. R. 51, *Contra Mahomed Chaman v. Ram Prasad*, 11 W. R. 52, note

<sup>3</sup> *Gauri Dayal v. Gopal*, V U. D. 566=1923 R. C. 441=10 R. and Cr. L. J. 41=4 L. R. Rev. 347

<sup>4</sup> *Karan Singh v. Kalyan Singh*, B. R. 14 of 1919=III U. D. 706

<sup>5</sup> *Brij Lal v. Sohan Pal*, II U. D. 345; *Jawahar Khan v. Hukma*, IV U. D. 217; *Dilsukh Rai v. Ram Adhm*, II U. D. 405

<sup>6</sup> *Sheo Baran Singh v. Chandan Singh*, II U. D. 510=3 R. and Cr. L. J. 157; *Khunni Lal v. Ram Dial*, II U. D. 432=2 R. and Cr. L. J. 219; *Moh. Ali Khan v. Narain Prasad*, II U. D. 421; but see *Gomti v. Chunni*, III U. D. 392.

<sup>7</sup> *Sardar Singh v. Raghu Nandan*, V U. D. 70=1922 R. C. 93=4 U. P. L. R. (B. R.) 89.

an occupancy tenant.<sup>1</sup> The person who for consideration took a co-tenant with him or his heirs could not in any event repudiate the contract.<sup>2</sup>

It follows from this that a firm of partners *per se* is not a person, but all the individual members thereof could together be regarded as a person. *Qu.* whether the provision in the Partnership Act that a firm of partners is a person, makes any difference.

Section 38 shows that as each partner dies his interest passes to his heirs, and no interest passes by survivorship except in the case of a co-widow or a co-tenant dying heirless.

There is no reason why a firm of partners as such should not own zamindari and therefore be landholders.

A limited company, and other corporation, or association, an idol, a *muth*, a temple, a wakf, etc., may be landholders and as such are persons. But section 17 (3) of the Act of 1926 prohibited the conferral of occupancy rights on such persons, in accordance with the views held before the Act of 1926 which introduced section 17.<sup>3</sup>

They are recognised as persons under the law, and may be tenants.

(iv) In usufructuary mortgages in these parts of the country, one often comes across a more or less contemporaneous transaction by which the mortgagor is put back in possession of the mortgaged property as tenant of the mortgagee. The transaction is carried through in something like the following manner. The mortgagee (pled, expressed to be usufructuary, declares that the mortgagee has been put in possession of the premises, to realise the rents and profits in lieu of the annual interest running on the debt. By the same or by another instrument of even or a later date the mortgagee lets the premises to the mortgagor at a rent which tallies with the annual interest payable on the debt. A question arises whether the annual payment to be made by the mortgagor is "rent" and he a 'tenant' within the meaning of the definition of these terms given in the Act. This turns upon whether the mortgage and the lease are part of one and the same transaction. If they are, the annual payment is not for rent but for interest, and a suit for its recovery will

<sup>1</sup> *Ramji Mal v. Abdul Nas*, III U. D. 482; *Ramin v. Hasina*, IV U. D. 298; *Kamta Prasad v. Borj Nath*, V U. D. 193—1922 R. C. 439—9 R. and Cr. L. J. 55. See also *Baleshar Rai v. Kesho Prasad Singh*, VII U. D. 536; *Dallo v. Nihal Singh*, IV U. D. 247—5 L. R. Rev. 310, *Munna v. Baran*, 14 L. R. Rev. 442.

<sup>2</sup> *Subedar v. Manorakhian*, 7 L. R. Rev. 203—1920 R. C. 291—12 R. and Cr. L. J. 236.

<sup>3</sup> *Hiri Das v. Shro Datt*, B. R. 19 of 1912, and case cited therein; *Kesho Prasad v. Rama Nand Gir*, I U. D. 89—29 I. C. 467, *Radhika Das v. Madan Gopal*, II U. D. 344; *Govind Das v. Bindeshri Prasad*, B. R. 5 of 1922—1922 R. C. 157—8 R. and Cr. L. J. 222, *Mackinnon v. Sampat Singh*, XIX U. D. 4—1938 R. D. 4 *Contra*, *Parma Nand Gir v. Rama Nand Gir*, 35 All. 474—11 A. L. J. 761—21 I. C. 43.

lie in a Civil Court.<sup>1</sup> If they are not, the annual payment will be for rent and the mortgagor will be a tenant.<sup>2</sup> The unity or diversity of the transactions is one of construction of the document or documents. The earliest case is that of *Bughelin v Mathura Prasad*, (4 All. 439) already cited, in which the facts were as follows: On the 16th of March 1874, *L* gave *M* a possessory mortgage of certain land for ten years, the mortgagee being empowered to take the profits of the land in lieu of interest; he was also to give a lease of the land to the mortgagor who was to pay the mortgagee the profits of the land every harvest in lieu of interest, and, in default, to pay interest on the principal sum at one per cent. per mensem from the date of the mortgage, in which case the mortgagee was to have no claim to the profit. The mortgagee was also given a power to cancel the lease and re-enter on the land in case the mortgagor failed to pay the profits of any year. On the 21st March 1874, *M* gave *L* a lease of the land under which Rs. 1,980 was the sum agreed to be payable annually as profits in lieu of interest. *L* did not pay any profits and *M* sued his legal representative for interest at the rate of one per cent. per mensem. It was held that the mortgage and lease were one and indivisible, that *M* and *L* did not stand in the relation of landholder and tenant, but of mortgagee and mortgagor, and that the claim for interest could be maintained in a Civil Court without enforcing the condition as to re-entry. The next case was *Altuf Ali v Lalta Prasad*.<sup>3</sup> There the mortgagee, in whose favour a deed of mortgage providing for possession in lieu of interest had been executed granted the mortgagor a lease of the premises on the following day, the amount of rent reserved being exactly equivalent to the amount of interest payable under the mortgage, and any arrears of rent being a charge on the mortgaged property. The Court ruled that the two formed parts of the same transaction, the lease merely providing a mode for the payment of interest on the mortgage-money, and the mortgagee could sue in a Civil Court for the amount reserved as rent. The next case is reported in a footnote to All. at p. 34.<sup>4</sup> There, *A* usufructually mortgaged certain land to and put him in possession. The mortgagee was to take the profit in lieu of interest. On the day after the mortgage he gave a lease of the mortgaged property to the mortgagor at the rent of Rs. 150. On the rent falling into arrears, *B* sued on his mortgage claiming to sell the property for the principal sum and the arrears of rent. His claim to the latter was negatived, and it was held that it should have been made . .

<sup>1</sup> *Azizur Rahman v Balbhaddar Prasad*, 7 L. R. Rev. 177=1926 R. C. 147; *Gulab Rai v. Muhammad Uzaffar Ali*, IV U. D. 487=2 L. R. Rev. 190; *Sheo Behari Lal v. Kawal*, II U. D. 465, *Bhudeo v. Megh Singh*, V U. D. 251; *Lakhan Singh v. Dammars Singh*, VI U. D. 140. *Contra*, *Umeda v. Gokul Chand*, IV U. D. 335; *Bughelin v. Mathura Prasad*, 4 All. 439=2 A. W. N. 71; *Altuf Ali v. Lalta Prasad*, 19 All. 469=17 A. W. N. 128.

<sup>2</sup> *Chimman v. Bahadur*, 23 All. 238=21 A. W. N. 95, *Khuda Baksh v. Alim-un-nissa*, 24 A. W. N. 273=1 A. L. J. 715.

<sup>3</sup> 19 All. 496=17 A. W. N. 128.

<sup>4</sup> Also in 21 A. W. N. 109.

Revenue Court, the two transactions being separate and independent. In the next case, *Chimman Lal v. Bahadur*,<sup>1</sup> the facts of which were similar, the *kabuliati* of even date executed by the mortgagor was drawn up strictly in the form of a lease between landholder and a tenant, and set forth the remedies available to the lessor under section 36, Rent Act, by ejectment in case of failure to pay the stipulated rent. The two transactions were held to be separate and a suit for arrears of rent to lie in a Revenue Court. The mortgagor was regarded as a tenant under the Rent Act. The next case is *Khuda Baksh v. Ahm-un-nissa*,<sup>2</sup> in which the term of the lease was less than that of the mortgage. The mortgage and the lease were regarded as two transactions.

A granted an usufructuary mortgage to B, and took the land back under a *kabuliati*. There was no term in the mortgage-deed empowering the mortgagee to call in his money on default in payment of rent, but the *kabuliati* empowered the lessor to eject on such default. It was held that the two were independent transactions.<sup>3</sup>

A curious result followed. The mortgagor became a tenant and could become an occupancy tenant by prescription.<sup>4</sup> Under the Act of 1926, he became a statutory tenant or a thekadar, according to the nature of the property mortgaged and leased.

A mortgagor by executing a contemporaneous *kabuliati* of the land mortgaged, retained its possession. He also executed a security bond for payment of the rent charging his equity of redemption. It was held in a suit to enforce the security bond that the documents of mortgage, lease and security did not constitute one transaction, viz. that of a simple mortgage, and that the obtaining of a decree for rent due from a revenue court was not a condition precedent to the suit to enforce the security bond and the fact that before the court can pass a decree enforcing the charge the arrears of rent have to be ascertained does not make the claim one for arrears of rent.<sup>5</sup>

A mortgaged his *sir* to D and then his zamindari share to P. P obtained a decree and in execution purchased the portion mortgaged to D, and then ejected A. In suit by P to eject D, held that he, being a prior mortgagee, was entitled to hold on until redeemed by P.<sup>6</sup>

(c) The idea of rent is that it is something payable for the holding, use of occupation or the land of another. A person who pays revenue of something on account of revenue payable to the Government is not a

<sup>1</sup> 23 All. 338=21 A. W. N. 95.

<sup>2</sup> 24 A. W. N. 273=1 A. L. J. 715, See also *Imdad Husain v. Budri Prasad*, 20 All. p. 407 (where the two transactions were held to be one); *Brij Mohan v. Algu*, 26 All. 73; *Budleshri v. Sadho*, 27 All. 591; *Chattar Mal v. Baij Nath*, 28 All. 712.

<sup>3</sup> *Mu. Karamat Ali v. Ganeshi Lal*, VIII U. D. (H. C.) 123=101 I. C. 516.

<sup>4</sup> *Kurdan Lal v. Hukam Singh*, 1928 R. C. 523.

<sup>5</sup> *Muhammad Ashraf Ali Khan v. Behari Lal*, 1937 A. L. J. 511=1937 A. I. R. All. 475.

<sup>6</sup> *Kalyanmal v. Samonda*, 25 I. C. 272 (A.).

tenant.<sup>1</sup> Hence, a holder of *nankar* land, subject to pay the quota of revenue recorded in his name is not a tenant or a rent-free grantee.<sup>2</sup> Arazidars, inferior proprietors, and the like are proprietors and not tenants. *A* is in possession of certain land in a mahal of which *B* is the proprietor. *A* is proved to have been in the habit of receiving the rent of his tenant, and paying a certain sum on account of Government revenue and village expenses and he is also competent to sell or mortgage his rights. *A* is not *B*'s tenant but a subordinate proprietor.<sup>3</sup>

Where the object of a lease of *vir* in favour of the vendor's father was to contravene section 14 of the Act of 1926, the tenant of the land was the vendor and not the father, and the persons in actual cultivation were the sub-tenants of the vendor and not of the father.<sup>4</sup>

(vi) A tenancy arises either by contract, express or implied, or by operation of law, as in the case of exproprietary tenancies. A contract of tenancy is a bilateral contract, each party meaning the same thing in the same sense. If a landholder regards the other, who happened to be the tenant's mortgagee as a tenant, and the other takes his stand upon a mortgage, there is no contract of tenancy.<sup>5</sup>

In this case, the defendant (tenant's mortgagee) had been passing *kabuliats* as tenant but in civil litigation to redeem the mortgage, the defendant had successfully asserted that he was the tenant's mortgagee. If *A* enters into occupation of *B*'s land with his consent, a tenancy arises, although nothing may have been said between the parties as to the payment or amount of rent. *B* can get this determined by a Revenue Court. If *A* enters into occupation without *B*'s consent the latter may choose to treat him as a tenant or as a trespasser. In the latter event no tenancy arises. Similarly, if *B* elects to treat *A* as a tenant and the latter repudiates that position, there is no tenancy. Whatever may have been the case under section 34 of the Act of 1901, section 44 of the Act of 1926 made it clear that a squatter was a trespasser, pure and simple. Section 180 of the present Act does not alter this.

(vii) In indigo cultivation, owners of land often take advances from the planter, the condition being that in certain events the latter may enter on the land, look after the cultivation, and harvest the crops. The planter by availing himself of the benefit of this condition becomes a tenant so as to be liable for payment of rent.<sup>6</sup>

<sup>1</sup> But see *Girwar v. Janki*, B. R. 3 of 1888

<sup>2</sup> *Ganesh v. Ganesh Prasad*, B. R. 17 of 1881.

<sup>3</sup> *Batool v. Jugat Narain*, 4 N. W. P. 172.

<sup>4</sup> *Kawalpat v. Girdhari Ram*, III U. D. 133.

<sup>5</sup> *Bishwa Nath Prasad v. Maharaja of Benares*, 1938 A. L. J. (B. R.) 39.

<sup>6</sup> *Manohar Das v. Deen Dayal*, 3 N. W. P. 179.

T. A.—7.



(viii) A tenant holding over after the expiration of his term is a tenant by sufferance whom the landholder may elect to treat as a trespasser or as a tenant at-will and eject at any time<sup>1</sup>

This is true of any person allowed to hold by sufferance<sup>2</sup>

(ix) In the absence of a proprietor, co-sharers who hold and cultivate his land as trustees are not his tenants.<sup>3</sup> Sometimes the *wajib-ul-arz* of a village provides that if a co-sharer disappears from the village without leaving any one to look after his interest, the other co-sharers may take up his interest until his return. A co-sharer who thus assumes control over the share of another is in the position of a trustee and not a tenant.

(x) A co-sharer in the zamindari may be a tenant of the entire proprietary body or of other co-sharers;<sup>4</sup> and a tenant by purchasing a fractional share in the zamindari does not cease to be a tenant so far as the holding is concerned.<sup>5</sup> For instance some co-sharers may be fixed-rate tenants of the entire body of proprietors.<sup>6</sup> So the mortgagee of a share may be a tenant of the proprietors.<sup>7</sup>

But the mere fact that a co-sharer cultivates more than his share of the land does not make him a tenant in respect of the excess.<sup>8</sup> The fact that according to the *wajib-ul-arz*, a co-sharer cultivating *sir* and *khudkash* has to pay something by way of rent to the proprietary body does not mean that he is a tenant. It only means that he is accountable in a suit for profits.<sup>9</sup> A co-sharer may cultivate another co-sharer's share as his tenant of *sir*.<sup>10</sup>

(xi) Where a Hindu tenant assigns some plots in his holding to his brother's widow in lieu of her right of maintenance he does not cease to be the tenant of those plots.<sup>11</sup>

(xii) A landholder is the person to whom rent is payable or with whom the contract of tenancy is made. An usufructuary mortgagee of an

<sup>1</sup> *Amir Husam v. Alladia*, 2 U. P. L. R. (B. R.) 93 = 6 R. and Cr. L. J. 108.

<sup>2</sup> *Mathura v. Raj Kumar*, III U. D. 465.

<sup>3</sup> *Nand Ram v. Bahal*, 3 L. R. 30.

<sup>4</sup> *Rikhi Ram v. Pancham*, XI U. D. (H. C.) 184 = 123 L. C. 108.

<sup>5</sup> *Mahabir Singh v. Ahsanullah*, 21 A. W. N. 35; *Abdul Hasan v. Bhura*, 26 A. W. N. 226; *Kesar Kuar v. Kallu Ram*, 50 All. 479 = 26 A. L. J. 283 = IX U. D. (H. C.) 17 = 9 L. R. Rev. 33 = (1927) R. C. 477; *Nindar v. Moh. Ahmad*, 1927 R. C. 593 = IX U. D. (H. C.) 155.

<sup>6</sup> *Jumna Prasad v. Dimri*, (1914) 1 U. D. (B. R.) 77; *Moh. Fida Husain v. Damri*, 1922 R. C. 322.

<sup>7</sup> *Baldeo Rai v. Mukhoo*, VIII U. D. 84.

<sup>8</sup> *Indar Lal v. Deojit*, 4 A. L. J. 1; *Gendanal v. Rustam Singh*, 7 A. L. J. 90

<sup>9</sup> *Dhandu v. Hans Raj*, 10 L. R. Rev. 1 = X U. D. 10.

<sup>10</sup> *Thakur Singh v. Dil Kuar*, 5 L. R. Rev. 274 = VI U. D. 212.

<sup>11</sup> *Bhagirathi v. Shahbaz Khan*, III U. D. 419; *Ram Dayal v. Gopal*, 5 L. R. Rev. 121 = 10 R. and Cr. L. J. 156 = VI U. D. 94.

expropriatory holding in possession, who, in virtue of such possession, sublets the holding or receives rent from the actual cultivators, is the landholder in respect of the latter. They cannot deny his title to receive rent;<sup>1</sup> after obtaining mutation of names he can sue for arrears of rent, including arrears of rent that accrued due to him before the mutation.<sup>2</sup>

It follows that a mortgagee not in actual possession cannot eject the actual cultivator or another mortgagee who is in possession or sue to recover rent from him, as he is not the latter's landholder.<sup>3</sup> And as a person cannot be his own tenant, a mortgagee in possession of a village cannot by cultivating land in that village acquire the status of a tenant for himself as against his mortgagor.<sup>4</sup>

(xiii) A thekadar in possession by receipt of rent is the landholder of the actual cultivators.<sup>5</sup>

A perpetual lessee of proprietary rights to whom is assigned the right to collect the rent of a holder of fixed-rate land and of non-agricultural land, is not the tenant of a holding.

A lambardar, as being the person to whom rent is payable, is the landholder<sup>6</sup>; so an expropriator who, having dedicated his property to charitable or religious uses, has constituted himself the manager.<sup>7</sup>

(xiv) Where *khudkasht* land of A is on partition allotted to B, B becomes entitled to it, unless he, by agreeing to take rent from A, constitutes him his tenant.<sup>8</sup>

If there has been a partition, and certain lands are allotted to A, B, another co-sharer before the partition, who cultivates them, does so as tenant or squatter.<sup>9</sup>

But if A's *khudkasht* is by mistake put in B's lot, and A continues in cultivation, B cannot eject him in a revenue court.<sup>10</sup>

<sup>1</sup> *Kunhaiya Lal v. Mata Dayal*, B. R. 4 of 1901.

<sup>2</sup> *Kamal Singh v. Bhagwati*, 14 L. R. Rev. 204.

<sup>3</sup> *Kesho v. Babu Lal*, B. R. 2 of 1897.

<sup>4</sup> *Parma v. Umrao*, B. R. 1 of 1885.

<sup>5</sup> *Lal v. Uday Partab*, B. R. 9 of 1892.

<sup>6</sup> *Siddiqi v. Ram Autar*, 39 A. 675=15 A. L. J. 745=3 Rev. and Cr. L. J. 213.

<sup>7</sup> See *Parasram v. Bholai*, B. R. 21 of 1881; *Sardar v. Puhup*, B. R. 1 of 1897; *Deepa v. Udai*, B. R. 6 of 1903.

<sup>8</sup> *Chaube Parmanand v. Arku Lal*, B. R. 19 of 1910; *Balram Singh v. Shero Charan Singh*, XII U. D. 41; *Kali Prasad v. Babu Lal Bachu Rai*, B. R. 2 of 1931=XII U. D. (B. R.) 7.

<sup>9</sup> *Hawal Rai v. Har Prasad*, 45 All. 711=21 A. L. J. 634=1923 R. C. 468=4 L. R. Rev. 437=V U. D. (H. C.) 196.

<sup>10</sup> *Mubarak Huszin v. Muh. Ishag*, 8 L. R. Rev. 6.

(xv) An usufructuary mortgagee of fixed-rate holding does not become a tenant of the zamindar, although he pays rent direct to him, nor of an occupancy holding.<sup>2</sup>

The view in *Saudagar v. Ganga Singh* (19 A. L. J. 702) was not adopted in *Kunj Behari Singh v. Lakhpal*<sup>3</sup> which held that both the mortgagor and the mortgagee constitute the tenant of the holding and the landholder may sue for and realise the rent in execution from either.

(xvi) A lessee cannot deny the title of his lessor, however bad the latter's title may be.<sup>4</sup>

(xvii) A settlement court decree conferring on the defendants underproprietary rights in trees only standing on the plots and not in the plots themselves, does not make the defendants tenants of the plot.<sup>5</sup>

(xviii) When a defendant, sued as a tenant, denies the tenancy the plaintiff must prove it.<sup>6</sup>

(xix) A lease for a period exceeding 5 years granted by the guardian of a minor not appointed under the Guardian and Wards Act but in a suit under section 92, C. P. C. is not void under section 9 of the G. and W. Act.<sup>7</sup>

(xx) *Holding by a family*.—A joint Hindu family is a person and hence may be a tenant. In the case of a family, specially a joint Hindu family, a question arises as to whether the whole family is the tenant or only the member in whose name a lease thereof or an entry in the revenue papers in respect thereof stands. Three distinct classes of cases must be considered, viz. (a) where the holding once belonged to a common ancestor, who has left several descendants, only one or some of whom are recorded as tenants, (b) where the holding at one time belonged to all or two or more members, and now is in the name of a single member or of a descendant of a single member, and (c) where a holding is taken for the first time in the name of a single member. See notes to section 38

25. *Subsection (24) Thekadar*.—This definition is borrowed from section 199 (1), Agra Act, with variations.

The variations made are :—the substitution of “ the rights in land of a proprietor, under-proprietor or permanent lessee or mortgagee in possession ” for “ proprietary rights in land; ”

and the addition of “ but does not include an underproprietor or a permanent lessee.”

<sup>1</sup> *Saudagar Singh v. Ganga*, 19 A. L. J. 702=IV U. D. 736=7 R. and Cr. L. J. 219 ; *Kishun Dayal v. Ravi Partab Narain Singh*, 10 R. and Cr. L. J. 258.

<sup>2</sup> *Ganga Dat v. Munshad Rai*, XV U. D. 518=16 L. R. Rev. 130.

<sup>3</sup> XVIII U. D. 323=1937 R. D. 329.

<sup>4</sup> *Pancham v. Inderman*, 1938 A. L. J. (B R) 12

<sup>5</sup> *Muh. Ali Razu Khan v. Menda*, 6 O. C. 341.

<sup>6</sup> *Kawalpat v. Girdhari Ram*, III U. D. 258.

<sup>7</sup> *Makund v. Muhammad Ahmad Said Khan*, IV U. D. 304.

In Oudh, the word was not defined, but the definition of tenant in section 3 (10) Oudh Act included him therein for certain purposes, as did the Agra Act, and as does the present Act. An under-proprietor is not a thekadar.

Where the Collector in proceedings taken by him under section 150 or section 152 Land Revenue Act, on an application under section 185 by the proprietor against an under-proprietor to realise arrears of rent due from the latter transfers the whole or part of the underproprietary interest to A, A was held not to be a thekadar or tenant within the meaning of section 3 (10) Oudh Rent Act, but a transferee of underproprietary rights. On the expiration of the term for which the transfer to A was made, the underproprietors could apply for restoration of rights and to be put back in possession. They cannot treat A as a thekadar admitted by himself if A holds on after the expiration of the period of the transfer,<sup>1</sup> i.e., a thekadar by sufferance.

The closing words in the definition of tenant "except as...a thekadar" should be noted. A thekadar is a tenant for certain purposes

Being a lessee of proprietary rights a thekadar's name should not be in the *khatauni* but should be in the *khowat*.<sup>2</sup>

Land does not necessarily mean a village or mahal or a portion of one. The word is general enough to include an area however big or small. At the same time theka must not be confused with an ordinary lease of ordinary cultivating land, or what is in effect a usufructuary mortgage,<sup>3</sup> although the parties may have described it as a theka.<sup>4</sup> The test is transfer of proprietary rights or of the right to receive rents or collect profits. This test is likely to give rise to nice arguments as to the interpretation of leases; and the duty of the court in each case will be to determine whether a particular lease transfers proprietary or only cultivatory rights or is in effect a mortgage.

A perpetual lease for consideration of plots of land granted by the owner thereof, conferring on the lessee the right to hold possession generation after generation and to sell or mortgage the plots and not reserving any right to the lessor to object or re enter, is a theka of proprietary rights with the right of transfer.<sup>5</sup>

The words "and in particular of the right to receive rents or profits" override the decisions under the old Act which held that every theka was not necessarily governed by that Act and the test was whether it let land for an agricultural or cultivatory purposes.<sup>6</sup>

<sup>1</sup> *Babu Lal v. Munru Singh*, XV U. D. 519.

<sup>2</sup> *Muh. Asghar Ali v. Nawab Ali*, XVI U. D. 446.

<sup>3</sup> *Muneshwar v. Ureha*, XX U. D. 122=1938 R. D. 852.

<sup>4</sup> *Muhammad Baksh v. Pabitra Pandain*, 12 L. R. Rev. 55=15 R. D. 212.

<sup>5</sup> *Ajodhya Kumar v. Ballaran*, 57 All. 568=1935 A. L. J. 1—XV U. D. (H. C.) 306; *Nazim Husain v. Ram Nath*, 1937 A. L. J. 1166=1930 A. I. R. All. 35; *Ram Adhar v. Sri Hanumanji*, XVII U. D. 318=1936 R. D. 451.

<sup>6</sup> See the cases cited in note to s. 4.

The words *right to receive profits* include a right to an undivided share of a co-sharer in a zamindari.<sup>1</sup>

Where a number of tenants occupy lands in an area, and the owner grants one lease of the entire area to a person, the lease may be regarded as a theka or lease of the right to receive rents.<sup>2</sup>

The words *right to receive rents* are contained in almost any theka.<sup>3</sup> As rent is defined in section 3 (18) it does not include *sayar* [defined in section 3 (20)]. Hence a theka for gathering forest produce, for instance, will not be a theka under this definition.

26. **Land**—See section 3 (10) for meaning. **Rent**, see section 3 (18) for meaning.

Under the Act of 1901, it was held that though a thekadar came under the definition of a non-occupancy tenant, he was not a tenant in respect of an agricultural holding, and hence could not maintain a suit under section 96 of the Act of 1901.<sup>4</sup> The reasoning is no longer true, as the expression "agricultural holding" does not occur in section 55 of the Act, and did not occur in section 125 of the Act of 1926. Under section 200 of the Act of 1926 as well as section 210 of this Act, a theka can be made only by written instrument executed by the landlord, and section 210 further provides that a theka shall be deemed to be a lease for agricultural purposes. Hence it would appear that a thekadar may sue for a written theka.

The rent payable by a thekadar is rent within the meaning of section 3 (18), and the lessor is the landholder of the thekadar within the meaning of section 3 (11), though the thekadar is not a tenant as defined therein, but is one for certain purposes.

A lessee under a permanent heritable lease may be a thekadar. The holder of a clearing lease, such as a *bhumkut* lease for an unspecified period was only a statutory tenant and not a thekadar.<sup>5</sup>

The proprietor may, before the expiration of a theka in A's favour, grant him another theka to commence after the expiration of the first theka.<sup>6</sup>

Where he is a tenant, he must have agreed to pay rent or deliver produce, as in the definition of tenant. If he did not, he is not a tenant.

<sup>1</sup> This renders obsolete *Abdul Majid v. Nageshwar Das*, 1927 A. I. R. All. 78—VII U. D. (H. C.) 243—7 L. R. Rev. 422—1926 R. C. 525—98 I. C. 92—10 R. D. 395.

<sup>2</sup> *Ram Nath Singh v. Secretary of State*, XX U. D. 80—1938 R. D. 796.

<sup>3</sup> This renders obsolete *Bullabhi Das v. Murat Narain Singh*, 48 All. 385—24 A. L. J. 489—1926 A. I. R. All. 432—1926 R. C. 226—35 I. C. 1048—12 R. and Cr. L. J. 123—VII U. D. (H. C.) 88, 190—7 L. R. Rev. 113, 305.

<sup>4</sup> *Girja Nand v. Maharaja Parbhu Narain Singh*, 1923 All. 398—VI U. D. (H. C.) 18—75 I. C. 605—1923 R. C. 416—8 R. D. 322.

<sup>5</sup> *Swami Dayal v. Nabi Baksh*, B. R. 1 of 1893—13 A. W. N. 81

<sup>6</sup> *Sunder Singh v. Marku Lal*, XVIII U. D. 119.

Where 12 annas of a village had been granted to A by an estate in lieu of wages for services or by way of maintenance, on payment only of certain government dues, such as the local cesses for *patwaris*, etc., and after his death his widow continued in possession on the same terms and presumably rendered some sort of services, it was held, in the absence of clear evidence that A or the widow was liable to pay rent, that A or the widow was a thekadar who came within the definition of tenant.<sup>1</sup>

27. **Under-proprietor**—The definition of the word is the same as in the Land Revenue Act, which says that it “means in Oudh a person possessing a heritable and transferable right in land who is, or but for a judicial decision or contract, would be liable to pay rent.”

The essentials are : (a) heritable right, (b) transferable right and (c) liability to pay rent. A person holding a non-transferable though a heritable lease is therefore not an under-proprietor but a lessee or tenant.<sup>2</sup>

The main distinction between a proprietor and an under-proprietor is that ‘proprietor’ signifies the proprietor (or part proprietor) of a *mahal* entitled to engage directly with Government for the land revenue. An underproprietor is the owner of land within a *mahal* who does not engage directly with Government but pays his assessment to the proprietor of the *mahal*.<sup>3</sup>

There appear to be three sources of underproprietorship and under-proprietary rights in Oudh, viz.—

(1) Those arising from ownership of villages prior to the annexation, 13-2-1856 ;

(2) Those arising from purchase from *talukdars*, or in consideration of clearing waste and jungle land and making them culturable and habitable ; and

(3) Those arising from grants made by *talukdars* to Brahmins, Pandits, junior members of families, etc., etc.

As will be seen presently, the first two are presumably perpetual, hereditary and transferable, and the third come under the denomination of under-proprietary rights, only when they are hereditary and transferable.

The first class, comprises those arising from ownership of a village or villages prior to the 13th of February, 1856, the date of the annexation of Oudh. The misrulo of the Nawabi prior to the annexation induced single or small village proprietors to put themselves under the protection of powerful *talukdars*. The initial arrangement probably was that the *talukdar* would pay the Revenue of the village direct to the Nazim ; the village proprietor or *zamindar* remained in the management of the village as the proprietor, realised the rents and Revenue thereof, and paid to the *talukdar* the amount of the Revenue plus a percentage

<sup>1</sup> *Dhankuar v Bhigwati Prasad*, B. R. 18 of 1893=14 A. W. N. 77.

<sup>2</sup> *Muh. Asghar v. Nawab Ali*, XVI U. D. 446.

<sup>3</sup> *Per cur.*, in *Govind Prasad v. Suraj Bukhs*, B. R. 4 of 1903.

usually 5 per cent. for his trouble, retaining the rest as his profits. Since might was right in those days and the weakest had to go to the wall, the correspondence between government officials, orders passed and circulars issued, soon after the annexation, show that talukdars had absorbed some of these villages and made them integral parts of their taluka—the original zamindars' interest in some cases being represented only by some *sir* or *nankar* in their possession or allowed to them. Those villages which were thus absorbed prior to 13th February, 1844, *i.e.*, twelve years before the annexation, lost all rights except in the plots of land held by them as *sir*, *nankar*, or as tenants. Those whose zamindari rights in talukas were absorbed between 13th February, 1844 and 13th February, 1856, were allowed by the Government, after consultation with the talukdars, to establish their status at the settlement and get under-proprietary rights, at the most favourable rates of rents paid by them in any one year prior to the absorption. Those who held on until 13th February, 1856, were recognised as under-proprietors giving as rent the government revenue *plus* five per cent. thereon to the talukdars. These two classes were entitled to sub-settlements but not the first.

Another class of underproprietors came into existence as a result of the sub-settlement operations of 1858-59. Some who were village proprietors then, but not under any talukdar, refused to accept the settlement offered to them which was then made with others, who thus acquired a permanent, hereditary and transferable proprietary rights in the lands for which they accepted the settlement, and the right to engage with the government for the revenue at future settlement. The former proprietors received a percentage of the assets or the revenue, as the annual value of the residuum of their interest, and were classed as under-proprietors. Sub-settlements of this basis were made with such former proprietors.

In 1866, the Sub-settlement Act was passed. It laid down certain rules for the recognition of rights to sub-settlements, and of proprietary rights in certain cases. Right to sub-settlement was held to vest in under-proprietors, and section 2 stamps such underproprietors as :

Person possessing under-proprietary rights, which had been kept alive, over the whole area claimed by way of sub-settlement, within the period of limitation. Such a person had to show that he, either by himself or by some other person or persons from whom he had inherited, had, by virtue of his under-proprietary rights, and not merely through privilege granted on account of service, or by favour of the talukdar, held such lands under contract (*pucca*) with some degree of continuousness since the village came into the taluka (section 2, Oudh Sub-settlement Act, 1866).

The word *pucca* needs an explanation. Prior to the annexation the old zamindars, *i.e.*, the original proprietors of the village had begun to execute in favour of their talukdars, *kabuliats*, sometimes annual and sometimes of more lengthened periods and the question arose whether

such *kabuliatdars* should not be deemed to have lost proprietary rights before 13th February, 1844 and should be deemed to be mere lessees and not under-proprietors. The real test lay in the right to profits, or liability for loss, according as the collections exceeded or fell short of the sum mentioned in any such *kabuliat*. If the profits or loss fell on the zamindar, he was considered to have held *pucca* even though he was out of rent collecting possession and the talukdar or chakladar's own servants collected rents. If the profits or loss did not fall on the zamindar, he was deemed to have held *katcha*. Section 3 explains the meaning of "contract (*pucca*) with some degree of continuousness." If the inclusion of the village in the taluka took place before 13th February, 1836, the lease must have been held for not less than 12 years between that date and the annexation of the province; if such inclusion occurred between 13th February, 1836 and 13th February, 1856, the lease must have been for not less than one year more than half the period between the time when the village was so included and the annexation of the province, the minimum period of the lease being, in all cases, not less than 7 years during the period of limitation; and if such inclusion took place after 13th February, 1844, the lease must have been held for not less than one year more than half of the period between such inclusion and the annexation of the province. Nothing in the section was to apply to villages included for the first time after 13th February, 1844 in which the underproprietor had held no lease for any period under the talukadar.

Other cases of underproprietors mentioned in the Sub-settlement Act are :—

(1) An under-proprietor whose clear share of profits did not exceed 12 per cent. of the gross rental was not entitled to sub-settlement, but was entitled to retain his *sir* and *nankar* land and the talukdar was to make up in land any deficiency between the profits of such land and one-tenth of the gross rental and the underproprietor was given in the whole of such land a transferable and heritable right of property (section 8).

(2) A former proprietor not entitled to sub-settlement, who had retained, within the period of limitation, either by himself or by some other person or persons from whom he had inherited, possession of land by virtue of his proprietary right he held as *sir* or *nankar* when he was in proprietary possession, was to be deemed an underproprietor in respect of such land (section 10). This refers to proprietors who had lost their proprietary title. The period of limitation refers to 12 years preceding 13th February, 1856.<sup>1</sup>

Under this rule it must be proved that the land in question had been held by the claimant or his ancestors as *sir* or *nankar* while they were

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<sup>1</sup> See *Hasan v. Baldeo*, 100 I. C. 851.]



in proprietary possession. Hence in the case of *abadi* land underproprietary rights cannot in the absence of proof or presumption of grant of such rights, be established.<sup>1</sup>

Previous proprietorship and the holding of the land by the claimant or his predecessor in title some time since the 13th of February, 1844 had to be proved.<sup>2</sup>

(3) A person who founded a *purwa* or hamlet and in consideration thereof held within the period of limitation possession of *sir* or *nankar* land was deemed to be an underproprietor of such land (section 11).

The land must have been granted in lieu of founding a *purwa*.<sup>3</sup>

This enumeration of underproprietors was not and did not claim to be exhaustive. It left out cases of purchases and grants of underproprietary rights.

In spite of a statement of the Chief Commissioner to the effect that the rules in the Act were not intended to apply to *Birts*, *shankalaps*, groves, habitations, tanks, waste land, manorial dues, etc., there is nothing in the rules themselves to exclude these objects from the operation of the Act, provided the provisions of the rule were complied with.

This Act, intended to be a final settlement of the rights of talukadars and certain classes of underproprietors, was passed at one sitting after a very scanty discussion, with the result that defects became obvious almost immediately; and a circular called the Hard Case Circular was promulgated. It provided for the following classes, which were not included in the Sub-settlement Act of 1866, *viz.*,

(1) Of villages not included in a taluka before the annexation but which were by some means entered in the talukadars' *kabuliats* for the summary settlement of 1858-59;

(2) Of villages included in talukas before 13th February, 1844 and in the summary settlement *kabuliats* of 1858-59, which were never in the possession of the talukadar between 13th February, 1844 and 13th February, 1856, but in which the former proprietor held possession during that period;

(3) Of villages which came into a taluka for the first time in 1850 or after, and in which the former proprietor not having held under the talukadar before annexation or not having held for the period required by the existing rules, could not obtain proprietary or underproprietary rights; and.

(4) Of all other cases of hardship not included in the three classes mentioned above.

<sup>1</sup> *Jamwant Kunwar v. Chetan Das*, 9 O. W. N. 687=1932 A. I. R. Oudh 280=16 R. D. 490=13 L. R. Rev. 328.

<sup>2</sup> *Kamta Prasad v. Pirthi Pal Singh*, 1936 A. I. R. Oudh 290; *Ram Khelwan v. Rampal Singh*, 1936 O. W. N. 1057=1937 A. I. R. Oudh 47=1936 R. D. 504.

<sup>3</sup> *Zulim Lal v. Court of Wards*, I. L. R. Rev. 56=IV U. D. 12=6 R. D. 115; *Amrit Lal v. Jang Bahadur*, 14 O. C. 196.

In all such cases, compensation in the form of *sir* land representing 10 to 25 per cent. of the gross rental of the village, was to be awarded to the zamindars. Such *sir* land was to be held in hereditary and transferable tenure, *i.e.*, in underproprietary right; and hence all land decreed under the circular is underproprietary whether it pays rent or whether it does not.<sup>1</sup>

Mr Sykes in his introduction to the "Compendium of the law specially relating to the talukadars of Oudh" enumerates the following classes of underproprietors:—

1. Those with whom sub-settlements were made under the Oudh Sub-settlement Act.

2. Holders of *Didari* or *Dihdari* tenures. These tenures arose on voluntary or involuntary transfers of land, by the purchaser assigning to the seller a portion of the property in perpetuity for his subsistence. This was also the meaning of the tenure given in *Kishun v. Shyam Sundar*.<sup>2</sup>

3. Holders of *sir*, as provided in rules 2, 8, 10 and 11 of the Sub-settlement Act.

4. Holders of *nankar* land, see the rule mentioned above. Such *nankar* was called *nankar dehi*. *Nankars ismi* and *tankhai* did not create underproprietary rights.

5. *Sir* or *nankar* in the possession of founders of *purwas*, as provided by rule 11.

6. *Birt*, which means cession. *Birt* tenures prevail chiefly in Bahraich, Fyzabad and Gonda. *Birt* tenures are estates carved out by talukadars out of talukas in favour of others. The true *birt* was acquired by purchase, and is known as the *bai birt*. There were many kinds of *birts* differing in their origin. The character of Gonda *Birts* is given in the passage quoted below from the judgment in 29 All. 708 at p. 714 *et seq.*

The following portion of the judgment of the Court of the Judicial Commissioners of Oudh in appeal No. 87 of 1903 is material as showing the grounds for their conclusions that the respondents in each appeal must be held to have an underproprietary tenure in the respective villages in suit. These conclusions and the reasons on which they were based were accepted as correct by their Lordships of the Judicial Committee:—

"The grant is not an isolated or anomalous grant. It is one made in pursuance of a wide-spread custom. Similar grants are common in the Districts of Gorakhpur, Basti, Gonda and Bahraich, and probably other submontane tracts, where large areas of jungle had not been brought under cultivation. Probably the best description of their extent is to be found in the Gonda Settlement Report.

<sup>1</sup> *Sant Bux Singh v. Qamar Jahan*, 3 L. R. Rev. 104=V U. D. 138=1922 R. C. 72=VI U. D. 77; See also *Muh. Ali, Muh. Khan v. Lalta Bux*, 2 L. R. Rev. 159=IV U. D. 655=5 R. D. 393.

<sup>2</sup> 19 O. C. 27

“ The author of the Gonda Settlement Report, after explaining the original structure of the Hindu society in its simplest form of consisting of Raja and cultivator in the north of the district and its more complex form in the centre of the district, owing to the intervention in the majority of villages, of bodies of hereditary *birtias* between the Raja and the cultivator, proceeds in para. 64 to explain the relationship between the Raja and *birtias*. In para. 72 he states that waste lands were at the Raja's disposal. ‘ He might cede them on favourable terms to single speculators, who engaged to bring them under cultivation by introducing ploughs themselves. Having once dealt with them he was bound by rules, which rules will be described when the division of the grain-heap and the position of the *birtias* are considered.’ After detailing the deductions from the grain-heap, the author proceeds:— ‘ What is left is divided into two equal heaps, one for the Raja and the other for the cultivator : ’ in local language ‘ the Raja's heap is known as the *hissa sarkari*. ’ And in para. 38 ‘ this or something essentially similar in principle is the method in use all over the district for land in full cultivation and paying rents in kind. The produce is the common property of every class in the agricultural community, from the Raja to the slave. No one is absolute owner any more than the others, but each has his definite and permanent interest,’ (para. 81) ‘ the basis of the whole society being the grain-heap ; in which each constituent rank had its definite interest. There is as yet no trace of private property, whether individual or communal, the rights which bear the nearest resemblance to it being the essentially state rights of the Raja. Independently of the fact that it is still in many places in actual existence, its importance to the administrator lies in its being the original type from which all the different forms of landed property have been derived by processes which may be easily traced, and whose operation is in most cases going on under our eyes. Its original form is modified by the growth of two institutions within itself, the *birtia* and the village zamindar ; and by the operation of two external causes—the introduction of money into the relations between its various members and the encroachment of a foreign power on the prerogative of the Raja.’

“ ‘ Para. 85.—*Birt* means a cession of any part of the Raja's rights within definite limits.’

“ ‘ Para. 86.—The most important classes of *birt* were of two kinds, the *birt zamindari* and the *birt jangal tarashi*. Of the first kind I know no instance more than two hundred years old, and by far the greater number were created within the present century when the Raja granting them was out of possession of the lands to which they referred. So complete is the cession that it is not likely that the comparatively small gratuity, which formed the consideration, would have reconciled the Raja to the loss of his rights, had he been in actual fruition of them. So their existence may really be traced to the operation of the external forces just mentioned. They are most common in Utraula, Sndullanagar and Burhapara where the Raja had been longest and most completely set aside, and in those parganas there is hardly a village where they

do not constitute the charter of the present proprietary family. Their terms, which varied very slightly, were as follows :—

“ ‘The Raja cedes a certain plot of land or a village to a certain grantee. He abandons all rights in water, in wood, and in roads; the *birtia* on his part is bound to plough and bring in ploughs, and inhabitants are liable for the cash assessed by the *nazim* or *chakladar* of the village. In the event of a grain division (as described above) the right of the *birtia* extends to one-fourth of the Raja's heap.’

“ ‘*Para. 87.*—In Gonda, Mankapur, and Bamanipur, *birts* are equally common, but on less favourable terms. The Rajas there still retained considerable power, and in Gonda at least must have entertained strong hopes of recovering the whole. The *birtias* consequently were very seldom invested with the peculiarly *zamindari* attributes of manorial rights or transit dues: and their zeal in clearing the *jungle* was stimulated only by the perpetual cession in favour of themselves and their posterity of the old *muladdam's* deduction of one-tenth from the Raja's grainheap.’

“ ‘The treatment of the zamindar by the Muhammadan government is explained in paras 91 and 92. ‘The *dehi nankar* allowed by that government, usually here, in the first instance, some definite proportion to the gross assets. In Utraula, for instance, the rights of the *birtias* were respected, and they were allowed, as they would have been under the Raja, one-fourth of the state assets. This they continued to receive whenever the Government collections were made in grain. It was the general introduction of cash payments for whole villages that modified their position in this respect.’

“ ‘*Para. 97.*—It has been seen that in the original form of the society money did not enter at all into the relations which subsisted between the purely agricultural classes, nor does it now in the north of the district, except in the case of such crops as sugarcane and poppy, whose division is effected with difficulty, and which occupy an infinitesimal proportion of the whole area. It is only in the rich old cultivation, between the Terhi and the Ghagra, that money-rents have been at all prevalent for a long time. Between the Terhi and the Kawana they are of recent and still partial introduction. They have, however, been for some time in use everywhere, where the *nazims* collected direct in the lump assessments on whole villages. They were recommended here by their obvious convenience, as it would have been an utter impossibility for any *nazim* to superintend the grain divisions in every village in his charge. The result of their introduction was that the revenue ceased to bear a fixed proportion to the total produce . . . . As the revenue ceased to bear a fixed proportion to the produce, so did the *nankar* of the village proprietors, originally a stated share of the revenue, cease to fluctuate also. The same sum as had been originally assessed as their share continued to be remitted in their favour, whatever the lump assessment on the whole village might be.’

“ ‘*Para. 102.*—The general introduction of money payments had converted *zamindari* receipts from the land into something bearing

resemblance to rent, and had undermined the fixity of tenure which was secured under the old system of payments in kind.'

" Para. 59 of the Basti Settlement Report shows the form of *birtpatr* prevalent in that district. It is very similar to the form in use in Gonda. The Raja surrenders water, wood and roads or transit dues within the four boundaries of the village. In the entire *birt*, half is declared to be revenue free and half to be the right of Government.

" From paragraph 52 it appears that the settlement was made with the *birtias*, an allowance of 10 per cent. being payable to the over-proprietors.

" In paragraph 59 the Settlement Officer states :— With the exception of Bansi, therefore, in every pargana there is, or was, a landed aristocracy in regular gradation. At its head was the Raja in possession of whatever portion of the original domain had escaped alienation ; next his more or less distant cousins and the members of his clan generally with their separate estates, and after them the great body of *birtias*. *Birt* means the grant of a right in land by the original lord of the soil. ....The *birt* grants sometimes conveyed a full proprietary right, sometimes only a limited and temporary interest in the village . . . Land was at first of little value and rights in large tracts were made over for a nominal consideration or given away without any consideration at all. . . . But the common and ordinary form of *birt* merely conferred a limited and subordinate right. The *birtia* had the entire control of the village, but he was only allowed to retain a definite proportion of the profits, most commonly one-tenth or one fourth, and was obliged to hand over the rest to the superior proprietor. In such cases the right, though limited, was complete as far as it went. If the Raja, as he sometimes did, resumed the control of the village, he allowed the *birtia* to retain a one-fourth or one-tenth of the land, as the case might be, instead of his general *birt*-right. I have come across several *arazi* holdings which arose in this way. All the different classes of *birtias*, as well as most of the *mukaddams* or managing le-sees, have been treated as zamindars since 1839, and the settlement has been made with them in full proprietary right, subject in some cases to the payment of a *malikana* allowance of 10 per cent. to the superior proprietor.'

" Paragraph 194 of the Gorakhpur Settlement Report contains extracts from the *Gazetteer* and a form of modern *birt*, merely stating that the village is assigned in *birt* and the *birtia* is to pay the rates payable by *birtias* in general. The terms are not nearly as precise as in the deeds in use in Gonda and Basti.

" Paragraph 194 proceeds :— ' The nature and rights of a tenure so common in the district formed the subject of long inquiries and deliberations at each recurring revision of assessment. The chief point was to ascertain whether the *birt*-holders (*birtia* or *birtia*) were or were not proprietors entitled to engage for the revenue. The Government at first took the negative view and directed settlements with the Rajas and Taluqdars ; but in 1835 the Board changed its mind. On the report of

the Collector, Mr. Armstrong, it held that the tenure was heritable and transferable, and that the *birtias* must be considered as proprietors of the villages held by them. Settlement has ever since been made with the *birtias* themselves, who have thereby become independent of their feudal chieftains. But they must still pay into the Government treasury to be credited to those chieftains a seigniorial fee (*malikana*) of Rs. 10 per cent. on their revenue.'

"An opinion is expressed that *mukaddam birts* carrying an allowance of one-tenth of the assots were merely granted during the pleasure of the grantor. Paragraph 196 contains a further extract from the *Gazetteer* to the effect that the *mukaddam* tenure is to all effect a *zamindari*. Paragraph 197 states that at the cession of the district to the English Government a vast majority of the land was either revenue free or waste land belonging to Government, and although the rajas and grantees owned all the cultivated land paying revenue, yet the cultivation was arranged for either through the agency of *birtias* or *mukaddams*.

"The *birtias* hold or claimed to have their lands under written grants acquired from the rajas by gift or by a form of purchase. To show that *birt* often was a recognised mode of acquiring land with sale and mortgage, an instance is unearthed from the records of 1817, where the Rani of Satasi offers to sell 19,000 bighas culturable land outright at Rs. 2 per bigha or to give it in *birt* at Rs. 1 per bigha and subject to an annual payment of one-fourth of the produce. The duties of *birtias* are defined to be to clear and cultivate the land and to make certain annual payment known as *malikana*. At the time of the cession of Gorakhpur to the British most of the revenue paying land was in the hands of *birtias*. The whole of pargana Maghar, the Banegaon tahsil, as well as the greater part of Salempur Majhauri were then the property of *birtias*.'

"In paragraph 198, the author, having disposed of *birtia* communities with acknowledged rights, proceeded to the *mukaddam* class of *birt*. He considered that this tenure was originally of a non-proprietary character. After some oscillations of policy the *mukaddams* were acknowledged by Government as the subordinate proprietors and engagements were taken from them.

"The Bahraich Settlement Report referred to at pages 176—179 of Sykes' Compendium contains a specimen form of *birt* deed in force in Bahraich. It contains a provision that the *birtia* is to get continuously the *zamindari* dues, whether the village is held direct or *kham*. The taluqdar consented to a sub-settlement decree being passed on that document. The Settlement Officer described the *birt*, as consisting in the sale of the right to settle on a certain plot of waste, and to enjoy all such valuable perquisites as would necessarily result from that occupation. The Settlement Officer only knew of one instance in the Bahraich district in which the *birtia* had obtained one-tenth of the gross produce of the village. He considered that the right of management was expressly reserved to the grantor at his option by the term of the deed.

"It will be apparent from the quotations, that a *birt* grant was usually made by a person in the position of a Hindu Raja or Governor in sub-montanic districts, as an act of state, for the purpose of bringing waste lands under cultivation. The grants are analogous to grants made by the British Government under the waste land rules. The necessities of the case demanded fixity of tenure. It is inconceivable that any reasonable man would pay large sums of money, and spend his labour and capital, in reclaiming jungle, if his position were no better than that of a tenant at will. A small minority of Revenue officials was of opinion that the raja had a right to resume such grants. It was admitted, however, that force was the prevailing element. MacAndrew's 'Some Revenue Matters,' page 26.

"That was not the view held by the majority of Revenue officials, or by the Government, or by the Legislature, and indeed the question of resumption was nothing more than a question as to which of two partners should be the managing partner. It is indisputable that on resumption the *birtia* would still take his one-quarter share of the raja's grain-heap. The only difference would be that raja would arrange for the cultivation of the village instead of the *birtia*. The quotations from the Basti and Gonda Settlement Reports establish this. This is in pursuance of an ancient and invariable custom, prevailing all over the north of India, by which a proprietor who is excluded from the management of the village invariably retains his *sir*, or *nankar* or specified share of the income.

"In the present case, there is a strong corroboration of this. On the *birtia* refusing to pay the sum of Rs. 500 claimed by the raja, Umrao Ali Khan, grandfather of Raja Mumtaz Ali Khan, at once conceded the *birtia's* right to receive an annual payment of Rs. 125, during the time of his exclusion from the management. These deeds, therefore, indisputably convey a right in perpetuity, to the particular share of produce specified therein.

"In the Districts of Gorakhpur, Basti, Gonda, and even in Buhraich notwithstanding the peculiar stipulation in the deeds there current, they have been held to also convey in perpetuity the right to the management of the village. Whole parganas, and whole tracts of country in those districts, are to this day held in proprietary and underproprietary right under the deeds. I may note here an error into which the Court below appears to have fallen. The deeds do not purport to be *pattas* or leases. They are correctly described as *birt patrs* or deeds of cession. There can be no doubt that in general the resumption of such tenure was an act of might rather than of right. That is the opinion in which the Government and the Courts have come, after long experience over large tracts of country. I have no doubt that that conclusion is a just and true conclusion, and that it is in accordance with the law and customs of the people.

"I hold, therefore, that a person holding a *birt* or *birt-zamindari* tenure under which he receives one-fourth or one-tenth of the profits of the village has a heritable and transferable right in that share, whether

excluded from the village management or not. There is in general a presumption that he is also entitled to retain in perpetuity possession and management of the village, though this presumption may be rebutted by the terms of the grant."

In *Kishendatt Ram v. Mumtaz Ali Khan*,<sup>1</sup> the following paragraphs are quoted by their Lordships from the settlement circular of 29-1-1861 : —" 18—that *birts* were given for whole mauzas or pitches of lands in mauzas " and proposes in the first instance to deal with the latter. " 19—These tenures when granted by the talukdar for money received, will be mentioned as representing the proprietary rights of the *birtias*, who by purchase have acquired the position of intermediate holders, and as constituting the portion of profits left them by the talukdar." Paragraph 20 proceeds to differentiate between *birts* granted by talukdars, and those given by mere thekadars, and treating the latter as not liable to be maintained, says : " *Birts* given by the original zamindars before the village was incorporated in the taluka will be upheld, unless the talukdar resumed them prior to 1262—63F. (1855-56)" " 21—*Birts* of entire mauzas are very common in Gonda and Gorakhpore. They originated in purchases from needy talukdars, and sometimes in clearing leases of jungle land." " 22—In other instances, the *birtias* held under the talukadar on the terms of their *birt* pattas. These generally were that 10 per cent or *dahaik*, as it was called, on the amount of the pattas, should be returned to them ; while they held on their pattas, the entire control of the village rested with them ; and if they threw them up rather than accept enhanced terms, they were entitled to 10 per cent. on the collections. Sometimes the *birtia*'s proprietary rights were shown in holding a portion of the area 'nankar.' " " 23—In other instances, the *birtias* had been stripped of every vestige of proprietary right, for embarrassed talukdars would sell the *birt* of a village several times over, and nothing was more common than to see several claimants to the *birt* of a village, each with his patta in correct form." " 24—Where the *birtia* has lost possession, there is no more to be said. We are not to restore it to him, but the Chief Commissioner...talukdars"—(cited at p. 67). " It is no argument that the talukdar may not realise more than 10 per cent. above the government demand. Such *birt* tenures must be considered an intermediate interest between the talukdar and the ryot, and, as such entitled to be maintained." " 25—The meaning of the term *birt* is a 'cession.' " It is the purchase of the proprietary rights subordinate to the talukdars on certain conditions as to payment of rent, which were held to be binding, though undoubtedly often violated by superior power."

Their Lordships then say :—" The result of what has been cited seems to be that, under the Nawabi, these *birt* tenures were presumably carved out of the talukdar's or superior zamindar's estate ; that they were held under him upon terms varying according to the terms of the particular patta or contract, and possibly according to the custom of a particular district ; that they did not necessarily entitle the holders

<sup>1</sup> 5 C. 198 (P. C)

T. A.—9.



of them to engage directly with the Government for the Revenue ; that when such direct engagements took place, *mulikana* was payable to the taluqdar ; that they were sometimes resumable, and when resumed would fall into the parent estate ; and that in all cases the relation of superior lord and tenant subsisted between the zamindar and the *birtias*."

In Bahraich, *birts* were often of the nature of *Jingal tarashi*, i.e., in sales of land for reclamation of waste and jungle lands. Tanks dug and groves planted by the *birtias*, and all dues leviable from the cultivators were secured to the *birtias*, as also the *dahaik* or a tenth of the gross produce of the village. No express right of management, in derogation of the taluqdar's power to leasing the village to whomsoever he pleased, was conferred nor was any rent reserved.

A *bishunpuri birt* has very little in common with *bankati birts*. In the latter the grantee has to lay out money and labour to get the land under cultivation. Hence his rights are regulated by the terms of the grant, construed strictly against the taluqdar grantor. His rent cannot be enhanced except under such terms. Where a *bankati* grant was to be rent-free for 5 or 6 years, and then the rate of rent was to be the rate of *bankati* prevalent in the taluqa, it was held that he could not be called upon to pay rent at a higher rate, and the uniform rent at which he had been holding for a long number of years showed the measure of rent, although for four years the taluqdar had dispossessed the grantee and given it to another at a higher rent.<sup>1</sup>

*Jiwan birts* were land assigned as *sir* to junior members of a family for their maintenance ; when the assignment consisted of a whole village, it was called a *bhayai* village.

Section 192 shows that land acquired in perpetuity, in consideration of the loss or surrender of a right previously vested in the grantee, or by written instrument and for a valuable consideration, is under-proprietary land. Hence, persons holding *bai birt* tenures under a grant from the proprietor for money received, acquire absolute under-proprietary right.<sup>2</sup> In this case, on the fraudulent admissions of the agents of the Court of Wards, under-proprietary rights in *A* were recognised at the second Regular Settlement. Hence a suit was brought by the taluqadar to recover possession of the village in which such rights were recognised. *A* relied on a grant of under-proprietary rights by the predecessor in interest of the talukadar, and on the decree of the settlement court. The sanad of this grant which was made before the annexation of Oudh, showed that *birt zamindari* was conferred on *A's* predecessor in interest, who was to take possession of the village and pay the government due and take one-fourth share of the Government Revenue as right of *birt zamindari* or *bai birt*. In the Circular of Rights, circular No. 2 of 1861, quoted at p. 727 of the judgment in the Allahabad Report, the Commissioner says "*birts* were given for whole mauzas or patches of land in mauzas. These tenures, when

<sup>1</sup> *Muhammad Abdul Hasan Khan v. Lachmi Narain*, 43 All. 355 (P. C.)

<sup>2</sup> *Muhammad Mumtas Ali Khan v. Murad Baksh*, 10 O. C. 308—29 All. 708 (P. C.)

granted by the taluqdar for money received will be maintained as representing the proprietary rights of the *birtias* who by purchase have acquired the status of intermediate holders, and as constituting the portion of the profits left them by the talukadar.

" *Birts* of entire mauzas were very common in Gonda and Gorakhpur. They originated in purchase from needy talukadars and sometimes in clearing leases of jungle land. In the Atraula and Bubnee parganas of the Gonda District, the *birtias* had been in many instances admitted to direct engagements with the Native Government for years previous to annexation, and of course, were settled with then, and should have been at the late Summary Settlement on the principle that we are not bound to restore to the taluqadars what they had lost before our rule commenced.

" The Chief Commissioner is clearly of opinion that the *birtias* who were found in direct engagement with the state at annexation or who have uninterruptedly held those villages on the terms of their *pattas* under the taluqadars, must be maintained in the full enjoyment of their rights, in subordination to the taluqadars."

Their Lordships of the Privy Council therefore held that the *bai birtias* concerned were underproprietors.

It was held by the Privy Council in *Ram Autar v. Muhammad M. mtaz Ali*,<sup>1</sup> that a receipt of rent granted in 1838 "on account of *birt* zamindari" of a village followed by two leases for fixed terms in each of which the lessee (to whom the receipt had been granted) was empowered to deduct his fourth share, out of his government revenue, on account of his *birt* zamindari, was not sufficient to prove a grant of under-proprietary rights in the village. In *Gauri Shankar v. Maharajah of Balrampur*,<sup>2</sup> a grant of *birt* zamindari was held to convey a subordinate zamindari interest and not of proprietary rights.

It has been held that a *birt* generally implies an under-proprietary right,<sup>3</sup> and a decree awarding *birt* rights under the Hard Case Circular awarded not proprietary but under-proprietary rights.<sup>4</sup> A *birt shankalap* reserving by way of rent a proportionate share of the revenue payable in respect of the land gifted, without any right of re-entry, creates a proprietary or under-proprietary right.<sup>5</sup>

In 1864, certain persons, who were afterwards declared not to have a proprietary right in the land in suit, gave *birt* rights to A. In 1866, it was declared that these persons, B and others, were the zamindars. Shortly before this decision B and the others gave a lease of the same land as was entered in the *birt* at practically the same rent to A, the lease purporting to be until the dispute about the proprietary right was

<sup>1</sup> 24 Cal. 853 (P. C.)

<sup>2</sup> 4 Cal. 839 (P. C.)

<sup>3</sup> *Ram Autar v. Drigpal*, 14 O. C. 41.

<sup>4</sup> *Dep. Com., Gonda v. Karimdad Khan*, 1929 A. I. R. Oudh 358=115 I. C. 290  
=12 R. D. 223.

<sup>5</sup> 14 O. C. 41.

determined. Since then *A* and his successors remained undisturbed for 46 years in possession of land varying very slightly in area from that held under the lease. The conduct of *B* and the others and their successors shows that they treated *A* and his successors as holding under the first deed of *birt*, and therefore *A* and his successors have a *prima facie* claim to be under-proprietors.<sup>1</sup>

A previous decision of a competent Court that certain land is *birt* is *prima facie* evidence of that fact.<sup>2</sup>

7. *Shankalap*. Initially they were *bishunprit birts* given to Brahmans for religious services or as charity. This was a mere rent-free grant and not an underproprietary right. There was another species of *shankalap* similar to the *bai birt* which was an underproprietary right acquired for money.

A *Gurdachchina* grant of a village in perpetuity on the terms of the grantee paying only the land revenue to the grantor is similar to a charitable *shankalap* and confers under-proprietary rights on the grantee.<sup>3</sup>

The settlement circular of January 1861 thus speaks of *shankalaps* in para. 26. "Some *shankalap* is of much the same nature as *birt*, but it differs so far from the *bai birt* that it is a condition of the former tenure that the taluqadar can redeem it at any time by paying the purchase money. Other *shankalap*, that which is styled *kushust* and is usually given to Brahmans and Pundits, is a pure muafi tenure given to the taluqadar, and will be treated like other rent-free grants by taluqadars," cited in *Drig Bijai Singh v. Gopal Dat*,<sup>4</sup> in which their Lordships held the particular *shankalap* to be of the nature of a *birt* and therefore underproprietary, and not a *shankalap* by favour or through privilege on account of services, which can be resumed like an ordinary rent-free tenure.

Whether the first class of *birts* were redeemable as indicated in the circular has been questioned by revenue officers of experience.

A *shankalap* grant connotes underproprietary rights.<sup>5</sup>

An entry of certain land as *shankalap* in the *naqsha tasfia lagan* is sufficient *prima facie* proof of the *shankalap* being held in under-proprietary right.<sup>6</sup>

A person who formerly had been a proprietor and has held for a long time since at a favourable rent is not necessarily an underproprietor unless there is evidence of a grant of underproprietary rights, such as *shankalap*, or *birt*.<sup>7</sup>

<sup>1</sup> *Muhammad Husain v. Mahadeo Prasad*, 1 U. D. 394=1 R. and Cr. L. J. 25.

<sup>2</sup> *Parbhu v. Maharaja of Balrampur*, 11 U. D. 491.

<sup>3</sup> *Sarabjit Singh v. Badri Nath*, 3 O. C. 268.

<sup>4</sup> 6 Cal. 218 (P. C.)

<sup>5</sup> *Balbhaddar Singh v. Vishveshar Singh*, 2 Lucknow 636=5 O. W. N. 487=110 I. C. 357=IX U. D. (H. C.) 232=10 L. R. Rev. 38=12 R. D. 153.

<sup>6</sup> *Lotan v. Ajodhya Estate*, 11 U. D. 498=2 O. L. J. 353=30 I. C. 425.

<sup>7</sup> *Bhagwan Baksh v. Mashaar Husain*, 19 O. C. 167.

A *shankalap* is not always an under-proprietary right. Where the rent payable is the amount of land revenue *plus* a percentage it is not sufficient to establish such rights, unless coupled with other facts. If the entries in the settlement record show that under-proprietary rights were not given under a decree, but only occupancy rights, there is no grant of under-proprietary rights by the decree.<sup>1</sup>

Though a *shankalapdar* may not necessarily be an under-proprietor he may be a superior tenant not liable to ejection by notice, or a rent-free grantee.<sup>2</sup>

Where under a *patta shankalap*, nothing except the rent mentioned therein was reserved, and it was proved that the grantee populated the land, cut the jungle and founded a *purwa*, the intention to grant under-proprietary rights in consideration thereof may be inferred.<sup>3</sup>

This is a good instance of conduct showing a grant of under-proprietary rights.

A deed of grant declared the grant to be *shankalap*, that the grantor would have no right or concern with the granted property, and that the grantee was to hold it rent-free for ever. Under-proprietorship was held to have been conferred.<sup>4</sup>

A deed of *shankalap* dated from before the first regular settlement, when some of the plots were recorded in the names of A's father and cousin, and others in the names of other members of the caste. It was held that these other persons were really sub-tenants of A's father, and the latter was the *shankalapdar*.<sup>5</sup>

The Court may look to the Gazetteer of a District to trace out the history of a *shankalap* grant.<sup>6</sup>

8. *Dar* is confined to the *patti Dalipur* in *Partabgarh* and is similar to a *bai birt*.

9. *Marwat*, i.e., a grant to the family of a man slain in a battle for the *talukdar*. Judicially it has been held to be heritable but not transferable, and therefore, not an under-proprietary tenure.<sup>7</sup>

<sup>1</sup> *Commissioner, Lucknow Dn. v. Mst. Bitana*, 1939 O. W. N. 391=1939 A. I. R. Oudh. 189=1939 R. D. 159.

<sup>2</sup> *Sita Ram v. Court of Wards*, 6 O. L. J. 37=49 I. C. 457; *Janaki v. Ganga Pal*, IV U. D. 372=53 I. C. 974=5 R. D. 123.

<sup>3</sup> *Sheoamber v. Kaniz Fizah*, 20 O. C. 285.

<sup>4</sup> *Ganesh Prasad v. Bushwa Nath*, 23 O. C. 30=56 I. C. 354.

<sup>5</sup> *Bibi Batul v. Ram Tawakkul*, IV U. D. 294=6 R. D. 492; *Partab Bahadur Singh v. Ramdas*, 2 U. P. L. R. (B. R.) 100=60 I. C. 234.

<sup>6</sup> *Bibi Batul v. Ghirao*, IV U. D. 312=6 R. D. 508

<sup>7</sup> *Kalka Baksh Singh v. Sheo Ratan*, B. R. 18 of 1910=II U. D. 434; *Swami Dayal v. Lachmin Kuar*, Sel. Ca. No. 61; 11 O. C. 240; *Jagan Nath Singh v. Drighijai Bahadur*, 2 L. R. Rev. 6=IV U. D. 587; *Sita Ram v. Salik*, 5 L. R. Rev. 13 Oudh=VI U. D. (H. C.) 134; *Ram Shankar Singh v. Lal Bahadur Singh*, 1 Luck. 98=13 O. L. J. 216=3 O. W. N. 267=92 I. C. 637=10 R. D. 374, but see *Balbhaddar Singh v. Kusheshar Das*, 3 Luck. 636=IX U. D. 232.

In *Balbhaddar Singh v. Kusheshwar Das*,<sup>1</sup> two judges ruled that *shankalap* and *marwat* grants connote ordinarily under-proprietary rights, and the grantee has a heritable and transferable estate, and if the private grant imposes a condition against transfer, the grantee may in spite of it make a valid transfer of the subject-matter of the grant. The transfer was held to be valid as between the transferor and the transferee, and not void *ab initio*. The judges purported to follow *Wazir Muhammad v. Har Prasad*.<sup>2</sup>

Compare with this the case of *Charu Chandra Biswas v. Dwarka Singh*.<sup>3</sup> There an order of the Financial Commissioner confirming an award by a Committee of the British Indian Association was to the effect that A. B. S. had been granted a heritable estate which was not transferable after four generations. The grant was for purposes of maintenance or *qazara*. The British Indian Association had no jurisdiction to and did not purport to establish under-proprietary rights, as has been held in *Har Prasad Pratab Singh v. Lal Rajghuraj Singh*:<sup>4</sup> *Lal Maneshwar Baksh v. Ram Nith*.<sup>5</sup> The name of A. B. S. was entered in the proprietary *Khewat*, as there was no other place to enter it. This of course did not affect the real status of A. B. S. The effect of the award was to confer on him rights superior to those of occupancy tenants for four generations only, but without a right of transfer. The restriction on the power to transfer was not unreasonable and could not be ignored having no legal effect.

Where the settlement court decree passed on compromise conferred under-proprietary rights on a party with a condition against alienation, and the compromise is such that it can be interpreted only as conferring absolute under proprietary rights, the condition against alienation is null and void and ought to be ignored.<sup>6</sup>

In *Rohan Singh v. Surat Singh*,<sup>7</sup> a question of a *marwat* grant arose. The taluqdar issued notice of ejectment which was contested successfully and the taluqdar brought a suit for possession of the village. It was found that the grant originated in 1825 on terms which, save as to the rent, were disputed in the suit, but under which the grantees remained in possession up to the date of the suit about 1880, that no claim to under-proprietary rights were made at the sub-settlement operations, that at the Regular Settlement, the rent was raised proportionately to the enhancement of the revenue. The District Judge did not find the *marwat* grant proved but found that the grant was at a favourable rate of rent for active services performed by the grantee and his father. He held that under-proprietary rights were not conferred, but the grant was of a permanent nature and therefore the ex-grantee's family could not be

<sup>1</sup> 3 Luck. 636—IX U. D. (H. C.) 232—110 I. C. 357—10 L. R. Rev. 38—5 O. W. N. 487.

<sup>2</sup> 15 O. C. 67—13 I. C. 613.

<sup>3</sup> IX U. D. 80—9 L. R. Rev. 658—1928 R. C. 169—12 R. D. 533.

<sup>4</sup> 34 I. A. 131.

<sup>5</sup> 4 O. W. N. 212.

<sup>6</sup> *Man Singh v. Bindeshri Baksh Singh*, 1937 A. I. R. Oudh 473.

<sup>7</sup> 11 Cal. 318 (P. C.)—121 A. 52.

ejected. The Judicial Commissioner reversed this decision. On appeal the Privy Council upheld the decision of the Judicial Commissioner on the ground that the grant created merely the relation of landlord and tenant for an undefined term, and that lengthened enjoyment at the same rent did not enlarge the tenant's rights.

10. *Chaharum and Daswant*, similar to *nankar*, *sir*, *birt jangal tarashi*. The grant was for clearing and reclamation purposes, or to keep old proprietors and influential residents of the village contented and loyal. In any event, whether the management of the village rested with the grantee or was taken away from him by the taluqadar, he was entitled to a fourth or a tenth of the produce of the village. Often, lands representing that share were assigned, and such lands became under-proprietary; but when no lands were assigned, the grantee cannot be called an under-proprietor in the village.

A cash allowance in perpetuity awarded by an order of a settlement officer and amounting to a tenth of the Assessment Officer's assumed rental is of the nature of *dahaik*, which is closely analogous to *nankar* and is a charge on the property.<sup>1</sup>

A cash *dahaik* is distinguishable from a *birt* right in the land entitling the *birtdar* to hold possession of the land and to deduct the *dahaik* from its rental. The former may in a sense be an under-proprietary right but it is not an "under-proprietary right in the land" like the latter.<sup>2</sup>

This does not mean that a right to receive cash *nankar* allowance never connotes a right to possession of land as an under-proprietor. Other facts may raise a *prima facie* case of under-proprietorship, for instance, that the predecessors of the person now entitled were zamindars in the village, that the allowance is set off against the rent of lands held by them and that in a past litigation a decree declaring under-proprietary rights was passed in favour of persons bearing the same relation to the zamindar as the person now entitled to the allowance.<sup>3</sup> A cash *nankar* granted by a decree of a settlement court in lieu of the surrender of zamindari rights, is an under-proprietary right and is charged on the zamindar's right so surrendered.<sup>4</sup>

<sup>1</sup> *Pran Kuar v. Shankar Baksh*, 21 O. C. 327.

<sup>2</sup> *Muhammad Abdul Hasan Khan v. Ishwar Nath*, 21 O. C. 244; *Mahabir v. Ram Prasad*, B. R. 1 of 1919=III U. D. 25=5 R. and Cr. L. J. 141=3 L. R. Rev. 268; *Sahab Din v. Mohammad Abdul Hasan Khan*, I U. D. 276 (a *dasaundh* holder does not possess an underproprietary right in the land held by him as an ordinary tenant); *Muhammad Abdul Hasan Khan v. Kelo Singh*, I U. D. 277 (or in land held under a lease); *Court of Wards v. Parmatma Din*, I U. D. 290 (*ib.*) *Dep. Com. v. Bhagwan*, 12 O. C. 124; *Bhagirath v. Bhagwati Prasad Singh*, II U. D. p. 550; *Gauri Shankar v. Court of Wards*, II U. D. 562; *Chotey Lal v. Iqbal Narain*, 6 L. R. Rev. 28 Oudh=VI U. D. (H. C.) 353=(1925) R. C. 85=8 R. D. 385.

<sup>3</sup> *Lal Muneshwar Bux Singh v. Shuhzade Khan*, I U. D. 330=III U. D. 330.

<sup>4</sup> *Har Narain v. Bank of Upper India*, 1938 O. W. N. 62=1938 A. I. R. Oudh 84.

Where the receipt of cash *nankar* against the rent of land is established, a *prima facie* case of underproprietary rights is made out but if the claimant of such rights sells the *nankar* he is no longer an underproprietor.<sup>1</sup>

There cannot be two under-proprietary rights in the same land. Hence if an underproprietor grants a permanent heritable and transferable lease of his underproprietary rights, reserving a certain amount of rent for himself and *malikana* dues and continues to be recorded as underproprietor, the status of the lessee is not that of an under-proprietor.<sup>2</sup> In *Ram Bharos v. Lal Achal Ram Singh*,<sup>3</sup> in 1871 a settlement decree after disallowing the claim of A, who had been in possession of the village M under the taluqdar long before, to sub-settlement as *pukhtadari*, declared and decreed that A had *birt* and *dasaundh* rights. It did not appear whether A was to remain in possession of the village as permanent lessee deducting the *dasaundh* from the rental payable for the village, or whether the taluqdar was at liberty to make the collections himself or through a lessee and pay the *dasaundh* to A. A however continued in possession from 1871. In 1880, A executed a term lease in respect of this village in favour of the taluqdar and entered into the usual covenant to give up possession at the end of the term. The taluqdar served a notice of ejectment at the end of the term, and the question was whether the grant to A in 1871 was of under-proprietary or of tenant rights. It was held from the allowance of the *dahaik* and the lengthened possession of A, that A was granted an under-proprietary right, which could not be effected by the term mentioned in the lease of 1880.

In *Tulshi Ram v. Lal Achal Ram Singh*,<sup>4</sup> a settlement decree was not only for a *dahaik* but also maintained the *dahaik* holders in possession of the village. To the taluqdar was reserved the right to alter or assess the rent. The holder was to pay the gross rent after deducting his *dahaik*; and in case of refusal to accept the theka or on the village being taken in *kham* tahsil, the right of the holder was to get 10 per cent. of the gross rental. The taluqdar served a notice of ejectment on the *dahaik* holder in respect of the village and a suit was filed to contest it. The defendant, taluqdar, pleaded that the plaintiff had refused to accept the theka and execute a lease of the village at the sum fixed by him. This was held to be irrelevant and the decree of 1871 was held to have conferred underproprietary rights. This, if meant to lay down a general rule, was wrong and was disapproved of in *Muhammad Abdul Hasan Khan v. Kelo Singh*.<sup>5</sup>

A number of similar cases seems to have cropped up at the time. In *Ram Nath v. Lal Achal Ram Singh*,<sup>6</sup> the settlement decree was similar

<sup>1</sup> *Babu Lal v. Tribhuwan Bahadur Singh*, XIV U. D. 525.

<sup>2</sup> *Bindeshwari Prasad v. Krishna Murari*, 1934 A. I. R. Oudh 145=XV U. D. (H. C.) 317=11 O. W. N. 430.

<sup>3</sup> B. R. 30 of 1891.

<sup>4</sup> B. R. 31 of 1891.

<sup>5</sup> 2 O. L. J. 154=28 I. C. 919=1 U. D. 277.

<sup>6</sup> B. R. 32 of 1891.

to the one in the previous case. An additional circumstance was that the *dahaik* rights were sold in execution of a decree and purchased by the taluqdar; and after this, the former *dahaik*-holder had executed a *kabuliat* for a term. It was held that the sale was of the right of deduction and not of possession as *birt-dars*, whose underproprietary rights remained.

At the first regular settlement the claim of A to a sub-settlement was refused but A was declared to be a *birt*-holder entitled to a *dasaundh* right, and the decree for *dasaundh* right was passed in A's favour in 1872. A and his descendants continued in undisturbed possession after that decree. The descendants of A are *birt-dars* or underproprietors.<sup>1</sup>

11. *Biswi*, found principally in Fyzabad and Sultanpur. It arose out of a peculiar kind of mortgage created by the proprietor in favour of a cultivator of the latter's holding, the rent payable by the mortgagee cultivator being very low or nothing at all.

12. *Dih*, i.e., portion of a village which was once covered with houses which have fallen into decay or abandoned, such portion lying waste or put under cultivation.

13. *Rakhauna*, i.e., the exclusive right of pasturage over a specific portion of waste land of a village.

14. *Bagh*, i.e., a class of groves planted by an underproprietor while he was in proprietary possession of a village and of which he has retained possession, or in the case of an underproprietor who is not also an exproprietor, of which he is found in possession.

*Reza milkiat* means a proprietary or underproprietary title in a small plot of land (a grove stood on the plot concerned in this case).<sup>2</sup> In *Kali Shankar v. Sheo Dayal*,<sup>3</sup> *Reza milkiat* was, on the interpretation of the decree by which it had been decreed, held to be an underproprietary right, and the holder was held entitled to the use and proprietorship of the soil on which the grove stood.

A person recorded as proprietor of a grove, is not necessarily, the proprietor or underproprietor of the land covered by the grove.<sup>4</sup>

Having examined the cases, in which there is a presumption of grants being hereditary and transferable, and therefore, under-proprietary, let us now turn to cases where no such presumption necessarily arises.

To constitute an underproprietor, the following are essential:—

(a) transferable, and (b) heritable, right of property, (c) in land, (d) on payment of a rent. If any of these conditions does not exist, the possessor is not an underproprietor. See *Kaniz Fatima v. Nageshar Singh*.<sup>5</sup>

<sup>1</sup> *Muhammad Abdul Hasan Khan v. Ram Nath*, 55 I. C. 241—7 O. L. J. 286.

<sup>2</sup> *Sheo Dayal Singh v. Suraj Kumar*, 11 O. C. 164.

<sup>3</sup> 16 O. C. 173.

<sup>4</sup> *Muhammad Baqar v. Sheo Mohan Singh*, 1 U. D. 368—1 L. R. Rev. 48—2 O. L. J. 85—27 I. C. 974; and a land is not grove if only a portion of it remains grove, *ib.*

<sup>5</sup> 5 L. R. Rev. 44 Oadh—VI U. D. 70.



(a) and (b). Whether a grant of land on payment of rent is, on the terms of it, transferable and heritable depends on the intention of the grantor as gathered from the instrument of grant or the transaction by or in which it arose, or from his conduct. A grant for two lives in succession is not heritable.<sup>1</sup>

After the annexation of Oudh, when settlement operations commenced, what happened was that persons holding *birt* or *shankalap* grants or otherwise laying claim to under-proprietary or even superior rights, petitioned the settlement court to form sub-settlements with them, under the provisions of the Sub-settlement Act of 1866. The taluqdar appeared, objected to the sub-settlement and consented to the presiding officer making a decree conferring heritable and perpetual rights on the applicant, reserving some rent. Questions have often arisen whether such decrees are evidence of or confer under-proprietary rights, or of heritable, permanent but intransferable leases. The question is one of intention and that intention has to be gathered from the decree itself and the conduct of the parties with regard to it. Sometimes it was expressly declared that the petitioner had no right of transfer without the consent of the taluqdar, sometimes some of the incidents were said to be those of under-proprietors, and sometimes both were to be found. The decision of the Privy Council, in *Lal Sripat Singh v. Lal Balaant Singh*,<sup>2</sup> may be cited here, as showing the position clearly. A applied at the first regular settlement to have his name entered as co-owner of a taluqa with B, who was the recognised taluqdar. B admitted A's right to maintenance as a junior member of the family but contested the right of co-ownership. The matter was compromised. A withdrew his suit and abandoned his claim to a share in the taluqa. B gave him a village, M, at a fixed rental, which represented the Government revenue payable thereon. A was to pay the rent and certain village expenses, and to appropriate the rents and profits, and B was to have no right of resumption or enhancement of rent. The petition of compromise prayed that under-proprietary rights be decreed in favour of A as regards the village M. The court decreed in 1869 as prayed, but added the words "without power of transfer." Subsequent documents between the parties and entries in revenue papers showed that A was described as under-proprietor until 1909, when B, describing him as a le-see, ejected him. A then brought a suit under section 108 (10) Oudh Rent Act, which was decided against him, and hence the present litigation. Their Lordships say "The position of an under-proprietor was fully understood in Oudh before the passing of Act XIX of 1868, which definitely crystallised and gave statutory recognition to his right and status. It had come into being from the circumstances of the times; the exactions of the revenue collectors under the old regime had forced small proprietors to protect themselves against oppression by engaging with some more powerful neighbour to pay the Government Revenue through him, but retaining their right in the property. In 1866 the Indian Legislature recognised their right

<sup>1</sup> *Chundarbhan Pratab Singh v. Sheobahal*, 5 L. R. Rev. 72 Oudh—VI U. D. 33.

<sup>2</sup> 16 A. L. J. 817=20 O. C. 180=4 Rev. & Cr. L. J. 235.

to obtain a sub settlement of their property, and the Act of 1868 clearly defined their position." Their Lordships then proceed to say that the Rent Act of 1868 recognises three classes of persons, proprietors, under-proprietors and tenants, and a sharp distinction is drawn between under-proprietors and tenants which the settlement officer must have been cognizant of in 1869. The petition of compromise clearly showed that the intention of the parties was that *A* should be an underproprietor. The expression "underproprietor without right of transfer" involves a contradiction in terms. As the settlement officer must have been aware of the law, he must have used the word "underproprietor" in its statutory sense; and hence the words "without right of transfer" could not cut down the rights of *A* as an underproprietor, and were meaningless.

That is, the intention to confer or recognise under-proprietary rights being clear, words or expressions in derogation of that right will not be allowed to cut down those rights. Similarly, if the intention was only to confer lessee rights, the use of the word underproprietor in describing some of the incidents of the lease will not amplify the powers of the lessee. The cases decided by the Judicial Commissioner's Court and the Board are noted below. Some of them will probably require reconsideration in view of the Privy Council decision. See *Charu Chandra Biswas v. Dwarka Prasad*<sup>1</sup> (cited above at p. 70) and *Bhagwan Baksh Singh v. Sukh Nandan*.<sup>2</sup> (cited below at p. 76).

The tests that seem to be applied for determining whether a grant of heritable rights was also intended to be transferable are: (1) whether the taluqdar was given a power of re-entry on breach of certain conditions, and (2) whether he had the power to fix and vary the rent as and when he pleased. If he possessed either or both these powers, the grant is intransferable and therefore not of underproprietary rights. For instance, a right of re-entry on default in making the payments, mentioned in the *sanad* or grant, has been held to indicate that the grant was not of an underproprietary status.<sup>3</sup> The reason is that section 52 or 62 Oudh Rent Act did not apply to under-proprietors, and they could not be ejected thereunder and section 152 of the Act showed that under-proprietary rights could be sold for arrears of rent, but no right of re-entry for non-payment of rent was reserved in the Act, so far as under-proprietors are concerned.

A permanent lease conferring heritable and proprietary rights creates an underproprietary tenure.<sup>4</sup> Expression *naslan bad naslan* in a perpetual lease creates hereditary, but not underproprietary rights.<sup>5</sup>

<sup>1</sup> IX U. D. 80.

<sup>2</sup> VII U. D. 195.

<sup>3</sup> *Rameshar Baksh Singh v. Sankata Baksh Singh*, 1 O. L. J. 389—25 I. C. 675.

<sup>4</sup> *Muhammad Zaman Beg v. Ilahi Buz*, IV U. D. 24—2 U. P. L. R. (B. R.) 111—1 L. R. (A.) Rev. 69—60 I. C. 618.

<sup>5</sup> *Fateh Bahadur Singh v. Narendra Bahadur*, 1929 A. I. R. Oudh 327—12 R. D. 473—113 I. C. 799.

A tenure which is not transferable cannot be treated as underproprietary, but the superior proprietor may create an under-proprietor for life without power of transfer.<sup>1</sup> If on the death of the grantee, a trespasser takes possession and asserts underproprietary rights and pays the underproprietary rent, and, on the faith of his being treated as an under-proprietor, does acts detrimental to himself and advantageous to the superior proprietor, the latter is estopped from denying the underproprietary right. The mere use of the words "patta zamindari ka dea" does not show that all zamindari rights were conferred and that the lease was transferable.<sup>2</sup>

A right to the timber in the groves or the *sayar* income from tanks or the right to plant trees or to replant trees, without any right in the soil, is not underproprietary.<sup>3</sup>

Under-proprietors who lose their rights but retain their groves under grove tenure are not underproprietors of the land in the groves.<sup>4</sup>

A grant of a permanent transferable *birt* without payment of rent is that of an underproprietary tenure.<sup>5</sup>

Absence of a right of re-entry indicates an underproprietary grant.<sup>6</sup>

Where a person has heritable rights, there is a rebuttable presumption that he has transferable rights also.

Underproprietary rights can be acquired by adverse possession,<sup>8</sup> if the origin of such possession began in underproprietary rights.<sup>9</sup> But hereditary rights do not arise by prescription in favour of thekaders who have held thekas of land in a village for a long time.<sup>10</sup>

<sup>1</sup> *Janki Kunwar v. Mitra Sen Singh*, 6 O. L. J. 696=54 I. C. 901.

<sup>2</sup> *Indrapal v. Uman Raman Partab*, IV U. D. 546=12 L. R. Rev. 229=5 R. D. 313. See also *Zalim Lal v. Court of Wards*, IV U. D. 12=1 L. R. (A.) Rev., 56=6 R. D. 115.

<sup>3</sup> *Mehr Ali v. Imdad Husain*, III U. D. 560=4 R. D. 339.

<sup>4</sup> *Jagan Nath v. Rameshwar*, III U. D. 537=3 R. D. 327.

<sup>5</sup> *Bikaroo v. Anant Bahadur*, 1929 A. I. R. Oudh 167=8 O. L. J. 311=63 I. C. 551.

<sup>6</sup> *Ram Autar v. Drig Pal*, 14 O. C. 41.

<sup>7</sup> *Deputy Commissioner, Gonda v. Karimdad Khan*, 1929 A. I. R. Oudh 388=12 R. D. 523=115 I. C. 891.

<sup>8</sup> *Khunnu Singh v. Abbas Bandi*, 4 Rev. and Cr. L. J. 169; *Mahmudul Hasan v. Sheo Prasad Singh*, 7 O. L. J. 296=57 I. C. 419; *Ram Lal v. Mangla Charan*, IV U. D. 121; *Nadir Singh v. Anpurna*, 7 O. L. J. 282=56 I. C. 759; *Ram Narain v. Abdul Rahman*, V U. D. 150. See also *Sultan Khan v. Hardwari*, 6 L. R. Rev. 33 Oudh=VI U. D. (H. C.) 358; *Gaya Buz Singh v. Himmat Bahadur*, 19 I. C. 566; *Pirithi Pal Singh v. Ganesh Din*, 25 O. C. 396=71 I. C. 641, (P. C.)=1923 R. C. 218.

<sup>9</sup> *Jhagoo Singh v. Court of Wards*, 101 I. C. 803.

<sup>10</sup> *Bhagwan Baksh Singh v. Sukh Nandan*, VII U. D. 195=7 L. R. Rev. 324=1926 R. C. 406=10 R. D. 533.

If the grant was for maintenance only, and on payment of rent, underproprietary rights by adverse possession will not arise.<sup>1</sup>

Underproprietary rights can be negatived by the rule of *res judicata*.<sup>2</sup>

Where a settlement court decree granted under-proprietary rights to A and B, and on appeal by the zamindar they were declared to be non-occupancy tenants, and on appeal by B alone, the first court decree was restored, A, although he did not appeal, must be regarded as under-proprietor, when he and his descendants have since been recorded as such and rent has been assessed on them, and they had made several transfers of the underproprietary right without challenge.<sup>3</sup>

But where a person served with a notice of ejectment asserted under-proprietary rights without any foundation and the notice was cancelled on the view that the person was probably an under-proprietor, and this position was not challenged by the taluqdar for more than 12 years, the Privy Council held that the mere assertion of underproprietary rights did not in the circumstances confer such rights.<sup>4</sup>

An entry that a person was holding as *sirdar* does not necessarily mean that he was admitted to be an underproprietor.<sup>5</sup>

As to the power to vary rent, the commonest arrangement was to grant a *dahaik* or *dasaundh*, i. e., a tenth of the assets of a village, to a person, and either confirm such person in the possession of the village or offer a sanad thereof to him, on the condition that he was to deduct his *dahaik* out of the assets, fixed or to be fixed by the taluqdar, and pay the balance to the latter. A condition was also put in reserving power to the taluqdar to fix the rent in future, generally at the next settlement, either on a fixed basis (for instance double the amount of Government revenue assessed on the village), or as the taluqdar may please, and that if the grantee refused to accept the rent so fixed, the taluqdar was at liberty to grant the village to any one he liked, the original grantee being entitled to get his 10 per cent. from the taluqdar.

Intrinsically, such an arrangement amounted to no more than a grant of 10 per cent. out of the assets of the village, and not a grant of the land of the village.

A settlement decree refusing sub-settlement to *birt*-holders but confirming their existing possession with a condition that the taluqdar

<sup>1</sup> *Gaya Prasad v. Alam Singh*, 1925 A. I. R. Oudh 751=VII U. D. (H. C.) 22=7 L. R. Rev. 42=1926 R. C. 1=9 R. D. 19.

<sup>2</sup> *Durga Prasad v. Jagat Jit Singh*, 1928 A. I. R. Oudh 359=5 O. W. N. 265=12 R. D. 72=112 I. C. 369.

<sup>3</sup> *Faqir Baksh Singh v. Udaa Raj Singh*, 1930 A. I. R. Oudh 29=6 O. W. N. 64=119 I. C. 456=13 R. D. 572

<sup>4</sup> *Muhammad Mumtaz Ali Khan v. Mohan Singh*, 45 All. 419, (P. J.)=1923 P. C. 118 See also *Sultan Khan v. Hardwar*, 6 L. R. Rev. Oudh 33

<sup>5</sup> *Khunni Singh v. Abbas Bandi*, 4 Rev. and Cr. L. J. 169.

was always to retain the power to fix rent and renew the lease, and declaring them entitled to a *dahaik* on the amount of rents so fixed, and that if they accepted the lease, they might deduct the 10 per cent. from the rent payable, but if they did not, the taluqdar would pay them 10 per cent. of the rent received by him, does not create an underproprietary right.<sup>1</sup>

A settlement court decree confirmed *A* in possession of a village subject to the payment of the rent reserved to *B*, the taluqdar, after deduction of 10 per cent. on account of *dahaik*, and gave the taluqdar the power to assess and vary the rent. *B*'s suit against *A* for possession and mesne-profits on the allegation that *A* had failed to accept the enhanced rent fixed by the taluqdar which had the effect of terminating his right to remain in possession of the village lies in a revenue court, as *A* is a perpetual hereditary lessee and not an underproprietor.<sup>2</sup>

Where the origin of a holding is a short term lease on a fixed rent, the fact that subsequently the terms are altered and the lessee or his descendant is described as a thekadar liable to pay revenue and cesses and a profit of a fixed sum to the owners, will not make him an underproprietor. He continues to be a lessee or thekadar.<sup>3</sup>

A settlement court decree gave effect to a compromise which was to the effect that the occupants who cultivated about 800 bighas of land would continue to do so paying the rent fixed according to the Oudh Rent Act with a deduction of two annas in the rupee the minimum being Rs. 100, which used to be their allowance from before. The land was entered as *kabzadar*; underproprietary rights were held to be conferred.<sup>4</sup>

Where the court infers from the evidence a grant, but not its precise terms, and it is proved that the grantee and his heirs for three generations have exercised such rights as an underproprietor would, the court may infer a grant of hereditary and transferable rights.<sup>5</sup>

The fact that there is no settlement court decree recognising or conferring underproprietary rights does not preclude civil courts from enquiring into the existence of such rights,<sup>6</sup> but the fact that such rights were not set up before the settlement courts under the First Regular Settlement renders the task of the claimant difficult as to proof.<sup>7</sup>

<sup>1</sup> *Purmeshar Dat v. Muhammad Abdul Hasan*, 14 O. C. 335.

<sup>2</sup> *Sheo Nath v. Muhammad Abdul Hasan Khan*, 19 O. C. 339—36 I. C. 664.

<sup>3</sup> *Dat Prasad Singh v. Charan Singh*, II U. D. 396—3 R. D. 103.

<sup>4</sup> *Sheo Narain Singh v. Court of Wards*, III U. D. 227.

<sup>5</sup> *Sheo Bahadur Singh v. Bishunath Saran*, 8 L. R. Rev. 57—4 O. W. N. 15.

<sup>6</sup> *Sheo Bahadur Singh v. Bishunath Saran*, 8 L. R. Rev. 57; but see *Awadh Behari Singh v. Suraj Bali*, 22 O. C. 201; *Muhammad Rashiduddin Ashraf v. Ram Sukh*, 24 O. C. 342.

<sup>7</sup> *Sheo Bahadur Singh v. Bishunath Saran*, 8 L. R. Rev. 57; *Rohan Singh v. Suraj Singh*, 12 I. A. 52.

A perpetual lessee, whose lease makes the rent variable with the revenue assessed upon the land and lays down conditions for his ejectment is not an underproprietor.<sup>1</sup>

Where the Board has, as to a part of an area of land covered by one grant, decided that the holder was an under-proprietor, that decision operates as *res judicata* as to another part of the land of the same grant.<sup>2</sup>

Where the right of transfer is expressly or impliedly withheld or negatived, underproprietary rights do not arise.

A decree of a settlement court awarding a permanent lease at a rent to be reviewable on a fixed basis at subsequent settlements, but expressly prohibiting a sale or a mortgage by the lessee, does not create underproprietary rights.<sup>3</sup>

A perpetual hereditary farming lease, created by a decree, after disallowing a claim for underproprietary right did not create underproprietary right.<sup>4</sup>

At a settlement with the consent of the taluqdar a decree was passed in favour of A granting him a heritable and non-transferable lease at a rent which was to leave a clear  $12\frac{1}{2}$  p c. profit to the lessee. The rent was to be calculated on the gross assets and was liable to revision every ten years. It was mentioned by the Commissioner who made the decree that no new proprietary rights were to accrue to A, and it was further laid down that on default in payment of rent, the courts could cancel the lease in accordance with the law applicable to holders of underproprietary tenures. Held, A was not an underproprietor.<sup>5</sup>

Where the vendor reserves certain land at a fixed rental, and at a subsequent settlement, this land is converted into a *sub-patti* with a certain sum assessed on it as revenue, the vendor becomes an underproprietor.<sup>6</sup>

A person who has by consent of the taluqdar obtained a decree for a permanent hereditary farming lease has also a transferable interest and is therefore an underproprietor.<sup>7</sup>

Where the first regular settlement declared a land to be held on a perpetual heritable but not transferable lease, acceptance of rent by the Court of Wards at the original rate from a transferee thereof does not amount to recognition of underproprietary rights. It amounts to

<sup>1</sup> *Lal Muneshar Baksh Singh v. Gaya Baksh*, 1 U. D. 87.

<sup>2</sup> *Hanuman Singh v. Muhammad Ali Muhammad Khan*, 11 U. D. 208.

<sup>3</sup> *Muhammad Mehdi Ali Khan v. Ram Charan*, 5 O. C. 187.

<sup>4</sup> *Nand Ram v. Amanat Fatima*, 6 O. C. 94, dissenting from 3 O. C. 108 and following Oudh Select. Case No. 282.

<sup>5</sup> *Rudra Partab Singh v. Sikandar Khan*, 20 O. C. 104.

<sup>6</sup> *Jadunandan Prasad v. Brij Bhukan*, 5 O. C. 70.

<sup>7</sup> *Kesho Singh v. Muhammad Asim*, 3 O. C. 108. But see *Nand Ram v. Amanat Fatima*, 6 O. C. 94.

nothing more than that the transferee is an ordinary tenant, and he can be ejected as such.<sup>1</sup>

Where it was established that before and during the first settlement there was much litigation between *A's* predecessors in interest and his co-sharers in a village, about the proprietary rights in the taluqa to which it appertained, that *A's* predecessors and his co-sharers had asserted that within a period of much less than 30 years preceding 13th February, 1836 they had been in possession as underproprietary *birdars*, that they claimed the lands cultivated by them as *sir*, that they were maintained in possession of a large area as their *sir* at a beneficial rate of rent by a court's order in 1860, and that in 1871 they again claimed sub-settlement, the Board presumed that *A* had underproprietary rights.<sup>2</sup>

By a deed of grant executed at the end of 1868, *A* made a grant rent-free of lands cultivated and uncultivated, within certain boundaries, in favour of *B*, a *sajjada-nashin* of a shrine, which grant had been continued in favour of the *sajjada-nashin* who had succeeded *B*, and was renewed in perpetuity in favour of *C*, a *sajjada-nashin*, for the maintenance of the charity and repair of the shrine of *B*, with all the proprietary rights attaching to the property at a fixed revenue of 10 rupees yearly. The renewal was expressed to be generation after generation, *i. e.*, to persons who would succeed *C* as *sajjada-nashin*, *C* appointed *D* as his successor, but *D* failed to appoint any one. On his death, *D's* widow got into possession as heir of *D* but was soon dispossessed. She sued under section 108 (10) Oudh Rent Act for recovery of possession, and the question arose whether she was a tenant. It was held that the grant was not of an agricultural tenancy but of proprietorship in the lands, and therefore, *C*, *D* and the latter's widow were never tenants, and as the widow has not been appointed as *sajjada-nashin* she could not sue.<sup>3</sup>

The fact that an underproprietor executes a *kabuliat* agreeing to pay enhanced rent does not affect his under-proprietary rights,<sup>4</sup> nor does the fact that the lease covenants for return of possession to the taluqdar at the end of a term mentioned therein.<sup>5</sup>

A *theka* of the whole village obtained by compromise by an underproprietor does not cause loss of his rights as underproprietor in respect of the plots shown to be held by him as *sir*-holder.<sup>6</sup>

<sup>1</sup> *Bishunath Saran Singh v. Shankar Bahadur*, 5 L. R. Rev. 26 Oudh=VI U. D. 128; *Fateh Bahadur Singh v. Nageshar Bahadur Singh*, III U. D. 619=4 R. D. 470; *Jhagoc Singh v. Court of Wards*, 1927 A. I. R. Oudh 535=101 I. C. 803.

<sup>2</sup> *Nazim Singh v. Muhammad Mumtaz Ali Khan*, B. R. 8 of 1893.

<sup>3</sup> *Chauharja Baksh Singh v. Armani*, B. R. 16 of 1891.

<sup>4</sup> *Ganga Din v. Rai Krishna Prasad Singh*, II U. D. 642.

<sup>5</sup> *Ram Bharos v. Lal Achul Ram Singh*, B. R. 30 of 1891.

<sup>6</sup> *Bishu Nath Saran Singh v. Suraj Pal Singh*, 1928 A. I. R. Oudh 33=IX U. D. (H. C.) 318=9 L. R. Rev. 342=4 O. W. N. 1037=11 R. D. 657=1928 R. C. 285.

As to proof to establish underproprietary rights, see *Har Dayal v. Udit Narain Singh*,<sup>1</sup> *Jagatgir Singh v. Suraj Baksh Singh*,<sup>2</sup> *Shujaat Haidar v. Ali Akbar*,<sup>3</sup> *Sheo Bahadar v. Bishunath Saran*.<sup>4</sup>

Where the plaintiff was entered as underproprietary shankalapdar in 1873 under a decree of 1871 and the entry has continued ever since, the court should not, although the circumstances under which the decree was obtained were suspicious, reject the long series of entries.<sup>5</sup>

An entry at the previous settlement that certain land was A's underproprietary holding is sufficiently disproved by an entry at the current settlement not recording the land as A's underproprietary holding.<sup>6</sup>

(c) *Right of property in land* A cash *nankar* granted in lieu of the surrender of zamindari rights is an underproprietary right,<sup>7</sup> and is in equity charged on the zamindari right surrendered.

But a cash *nankar* does not mean that the persons entitled to it possess an underproprietary right in any land in the village.<sup>8</sup>

As land includes tree, underproprietary rights may exist in groves. An exclusive right of fishing in a tank does not amount to a right in land and the person having it is not an underproprietor.<sup>9</sup>

(d) *On payment of rent*.—If no rent is payable, no underproprietary rights arise. A mortgagor who reserves certain land from the operation of the mortgage by conditional sale created by him, without mentioning anything about rent or payment or non-payment of rent in respect of the reserved land, is a proprietor and not an underproprietor.<sup>10</sup> A *nankar*-holder with no rent to pay is not an underproprietor irrespective of what he considered himself to be.<sup>11</sup>

So a vendor who reserves a piece of land from the sale without any condition of paying anything for it, is not an under-proprietor.

If he agrees to pay something, a fixed sum, or the proportionate share of the revenue chargeable thereon, he becomes an under-proprietor.<sup>12</sup>

<sup>1</sup> 8 O. C. 30

<sup>2</sup> 8 O. C. 145.

<sup>3</sup> 1927 A. I. R. Oudh 239=X U. D. (H. C.) 266=10 L. R. Rev. 353=XI U. D. 234=101 I. C. 701 (Oudh).

<sup>4</sup> 4 O. W. N. 15=99 I. C. 876.

<sup>5</sup> *Dwarika Prasad v. Tajummal Huson* I. L. R. Rev. 17 See also *Ali Akbar v. Shujaat Haidar*, I. L. R. Rev. 3.

<sup>6</sup> *Hardwar v. Jaswanti*, 5 L. R. Rev. (Oudh) 180.

<sup>7</sup> *Ruara Pratab v. Sheo Charan*, 1 O. C. 163.

<sup>8</sup> *Sri Ram Kumbhar v. Hanoman Singh*, II U. D. 639.

<sup>9</sup> *Thakur Din v. Ram Bharras*, X U. D. (H. C.) 260=10 L. R. Rev. 348=13 R. D. 710.

<sup>10</sup> *Kedar Nath v. Lachmi Kuar*, 3 O. C. 310.

<sup>11</sup> *Uday Narain v. Behari Lal*, XVI U. D. 592.

<sup>12</sup> *Jadu Nandan Prasad v. Brij Bhukhan*, 5 O. C. 70; *Kedarnath v. Lachmin*, 2 O. C. 273.



The condition as to payment of rent in the definition does away with the force of the Privy Council ruling in *The widow of Shankar Sahai v Kashi Parshad*,<sup>1</sup> and their Lordships' observations in 4 Cal. 839 at pp. 853-4.

A *muafi* does not pay rent. Hence while a *muafidar* holds his *muafi* as such he is not an underproprietor. It is only when proceedings were taken under Chapter VII-A and the necessary declaration has been made under section 107-H of the Oudh Rent Act that he becomes an underproprietor.<sup>2</sup>

A plot proprietor, i. e., a holder of what is called *hakikat-mutafarqa*, paying government revenue—not rent—is not an underproprietor.<sup>3</sup>

Where the wording of a *patta* does more than suggest that the holder is an underproprietor and not a tenant and when there is evidence that the holder managed cultivated and uncultivated lands, exercised rights of escheat, settled tenants and allowed them to cut trees and to sink wells, and this has been so as far back as the memory of man went the conclusion is that he is an underproprietor.<sup>4</sup>

*Rent of underproprietor.*—Rules 4 to 7 of the Oudh Sub-settlement Act, 1866, lay down the following rules for the rent and enhancement of the rent of underproprietors:—

I. Where the agreement between the underproprietor and the taluqdar provided for holding in perpetuity at a uniform (*Istimrari*) rate of rent, he had to pay at that rate, but if at a future settlement or revision thereof, an alteration in the amount of the revenue took place, the rent will be so altered as to maintain the proportion of the profits of the underproprietor and the taluqdar (rule 4.)

II. If such agreement was to hold on the payment of the government demand, imposed before the annexation of the province, with the addition only of certain dues to the taluqdar or other charges, the underproprietor was in future liable only for the payment of the Government demand for the time being plus 10 per cent. in lieu of taluqdaree dues and other charges (rule 5.)

III. If such agreement was that the underproprietor should pay a certain share or proportion of the profits or produce of such lands, he should in future be liable for payment of such share or proportion (rule 6.)

IV. In other cases (rule 7):—

(a) the payments made by the underproprietor to the taluqdar before annexation formed the standard for regulating the present (i. e., in 1866) payments.

(b) The maximum payable was the gross rental minus 10 per cent. This rule was in the original draft and was inadvertently allowed to

<sup>1</sup> 4 I. A. 198.

<sup>2</sup> *Murl v. Gajraj Singh*, 21 O. C. 124.

<sup>3</sup> *Baiju Singh v. Narayan Din*, B. R. 8 of 1914—I U. D. 70.

<sup>4</sup> *Bishunath Saran Singh v. Chandra Gopal Singh*, 1930 A. I. R (P. C.) 248=XI U. D. 294=7 O. W. N 931=14 R. D. 542.

remain as part of rule 7, but rule 9 increases the 10 to 25 per cent. In such a case, cesses on account of roads, schools, etc., amounting to  $2\frac{1}{2}$  per cent. on the Government demand became payable by the taluqdar and the village expenses, and patwari and chaukidari dues by the underproprietor.

(c) The minimum rent payable was the amount of the Government demand *plus* 10 per cent.

(d) If the gross rental before the annexation was nearly the same as that in 1866, the rent was to be the same amount as that paid before the annexation.

(e) If the gross rental in 1866 exceeded or fell short of the former gross rental, the rent was to be increased or decreased proportionately.

(f) Former gross rental and payments of the underproprietor meant the average amount of the gross rental or payment for the 12 years preceding annexation, or for such portion of that time as the underproprietor held a lease of the village from the taluqdar, or for such portion of that time as necessary information might be obtained.

Underproprietors whose beneficial interests have been transferred by an official act (*e. g.*, transfer on account of default of their shares to others) to persons who thereby become possessors of the whole mahal, are not liable to pay rent to the taluqdar so long as they remain out of possession.<sup>1</sup>

*Merger.*—An underproprietor inheriting proprietary rights causes merger of his tenure,<sup>2</sup> but if the holder of a mere life estate acquires underproprietary rights in a village belonging to the estate, there is no merger of the underproprietary rights.<sup>3</sup> Whether merger takes place depends on circumstances.<sup>4</sup> There is no merger where it would be prejudicial to the underproprietor's interest,<sup>5</sup> or where the two interests are kept separately recorded in the revenue papers.<sup>6</sup>

*Surrender* by a Hindu widow does not destroy the underproprietary rights surrendered.<sup>7</sup>

4. (1) Every agreement, whether made before or after the commencement of this Act, which purports or would operate, to restrict a tenant from enforcing or exercising any right conferred on, or secured to, him by this Act is void to that extent.

Restrictions on agreement between landholder and tenant.

<sup>1</sup> *Muhammad Mehdi Ali v. Muhammad Yasin*, 2 O. C. 128 (P. C.)

<sup>2</sup> *Razamand Singh v. Jagole*, 11 O. C. 133.

<sup>3</sup> *Nisar Ali Khan v. Muhammad Ali Khan*, 6 O. W. N. 549=119 I. C. 337.

<sup>4</sup> *Angad Singh v. Janki*, 12 O. C. 97.

<sup>5</sup> *Mata Prasad v. Razamand Singh*, 13 O. C. 35 doubting 11 O. C. 133 (cited above)

<sup>6</sup> *Maula Baksh v. Court of Wards*, 14 L. R. Rev. 908.

<sup>7</sup> *Bishunath Saran v. Shoo Nath*, VII U. D. 162=1926 R. C. 285=7 L. R. Rev. 229=10 R. D. 507.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), an agreement between a landholder and a tenant is void in so far as it purports—

(a) to prevent a hereditary tenant from acquiring any of the rights conferred on hereditary tenants under the provisions of this Act ;

(b) to take away or limit the right of a tenant to make improvements or to claim compensation for the same in accordance with the provisions of this Act ;

(c) to entitle a landholder to eject a tenant or enhance his rent otherwise than in accordance with the provisions of this Act ;

(d) to take away the right of a tenant to sublet in accordance with the provisions of this Act ;

(3) When land not previously cultivated has been reclaimed by the landholder and let to a tenant or has been let to a tenant in order that it should be reclaimed, then for a period of fourteen years after such land was first brought under cultivation nothing in this section shall be construed as affecting the conditions of any contract which relate to enhancement, abatement or variation of the rent of such land or which provide that during any period for which such land is to be held free of rent the tenant is liable to ejectment for breach of any condition thereof.

*Explanation*—When land has remained uncultivated for a period of seven years it shall for the purposes of this sub-section be deemed to have not been previously cultivated.

(4) Subject to the provisions of this section and any other law for the time being in force, any agreement entered into between a landholder and a tenant relating to a holding, including an agreement conferring transferable rights, shall be valid and enforceable.

1. This corresponds to section 8 of the Agra Act and section 4 of the Oudh Act. The additions to the Agra Act are “ whether made before or after the commencement of this Act ” in sub-section (1) and sub-section (4).

The substitutions are “ a hereditary tenant from acquiring any of the rights conferred on hereditary tenants ” for “ the tenant from acquiring a right of occupancy in land ”.

The Oudh Act section 4 related to the landlord's right to eject or to enhance rent, and the tenant's right to make improvement and to claim compensation therefor, *i. e.*, to matters dealt with in clauses (b) and (c) above.

*Void to that extent*.—An agreement providing for enhancement more than 25% is not wholly void, the enhancement being valid to the extent of 25%.<sup>1</sup>

2. **Nautor land.**—Section 19 of the Act of 1926 (corresponding to section 29 of this Act) was subject to the provisions of section 8(3) of the Act which related to *nautor* lands. It related to land not previously cultivated (which was explained to include land not cultivated for a period of seven years) and reclaimed by or at the expense of the landholder, or let for the purpose of being reclaimed by the tenant, and protected the conditions of any contract relating to it for a period of fourteen years, in other words, prevented statutory rights accruing in it for fourteen years.

3. *Sub-section (3)* differs in some material incidents from section 8(2) Agra Act and section 4(3) and 4 Oudh Act. Under the latter no condition of a contract relating to a *nautor* land could be enforced for fourteen years from the reclamation. Now the conditions that cannot be so enforced are those relating to enhancement, abatement or variation of the rent. Hence land let after reclamation or for the purpose of being reclaimed will become the land of a hereditary tenant, subject to the conditions noted above.

The last portion of the sub-section preserves the efficacy of that condition of a contract which provides for ejection during the period for which the land is to be held free of rent for breach of any condition of the contract.

To attract the sub-section, it must be proved (i) that there was a letting, that is, that the occupant was treated or admitted as a tenant<sup>2</sup> of land which had remained uncultivated for seven years; (ii) that this letting was (a) after reclamation by the landholder or (b) with a view to its being reclaimed by the tenant; (iii) that cultivation by the tenant has been for less than fourteen years.

Where a mortgagee granted a permanent lease of *banjar* land, which was beyond his powers, and there was nothing to show that the land had been previously cultivated, no statutory rights accrued.<sup>3</sup>

Under the repealed Act of 1926, it was held that the fact that previous to the reclamation lease, a small portion of the land had been spasmodically cultivated did not make any part of it previously cultivated so as to bar the operation of section 8(3) of that Act and create statutory rights.<sup>4</sup> The decision will probably hold good under section 4(3), for the word land means the whole land, and not only part of it.

If a tenant of a holding takes up some *nautor* land under a separate rent agreement, this land will not become a part of his previous holding.<sup>5</sup>

<sup>1</sup> *Navin Chandra v. Sumer*, 1940 E. D. (B. R.) 444.

<sup>2</sup> *Zahir Ahmad v. Mohan*, X U. D. 187. *Jagdish v. Talsar Prasad*, XII U. D. 217 = 12 L. R. Rev. 329.

<sup>3</sup> *Hardwar P. nje v. Javvant*, 5 L. R. Rev. 1 = 71 U. D. 221.

<sup>4</sup> *Kalundur v. Naqeehar Prasad*, XII U. D. 125 = 12 L. R. Rev. 218.

<sup>5</sup> *Rudra Partab Siki v. Himmat*, Rent Act Biling No. 57, *Sital v. Jalihar Rahman*, B. R. 5 of 1932 = XIII U. D. (B. R.) 83.

The sub-section has no application where the tenant has not contracted himself out of his rights but only agreed to take the *nautor* land or *batai nisfi*<sup>1</sup>

Whether a case came under the reclamation lease (sub-section 3) raised mixed question of fact and law.<sup>2</sup>

4. Sub-section (4) is not easy to construe. All that is clear is that an agreement is subject to the provisions of the section, i. e., is not valid if it takes away or minimises any of the rights secured to tenants by the section, and that an agreement conferring transferable rights is valid. Transferable rights do not necessarily include heritable rights.

The right to confer transferable rights on a tenant in respect of his holding had been negatived<sup>3</sup> although in one case it was held that a landholder could confer any benefit or additional rights on a tenant<sup>4</sup>; but now it is affirmed

A landholder may confer transferable rights on his tenant.

Heritable rights as under the Act existed and could not be taken away; but as to rights heritable according to the personal law, the decisions were not uniform.<sup>5</sup> Now the general words of sub-section (4) may be relied upon to show that such rights can be created.

Subject to the provisions of this section, i. e., sub sections (1) and (2). Any other law for the time being in force, i. e., a law other than that contained in this Act. Would the Contract Act or the Transfer of Property Act sections 10 and 11 come in here? If the first is included, an agreement which is void or voidable or without consideration or lawful consideration, would not be effective. *Agreement...relating to a holding, e g., not to enhance rent, or not to eject.* Under the earlier Acts such rights were secured by applying the rule of estoppel.

5. Save as otherwise provided by the Code of Civil Procedure, 1908. in the case of proceedings governed by that Code, anything which is by this Act required or permitted to be done by a landholder, may be done by an agent of the landholder authorized by

Power of landholder to act through agent.

<sup>1</sup> *Mahesh Singh v Shukarukkah* 1919 R. D. 521 (B. R.).

<sup>2</sup> *Harihar Dutt v Kapurthala Estate*, 1935 A. I. R. Oudh 163=XV U. D. (H. C.) 304=11 O. W. N. 1428=18 R. D. 669

<sup>3</sup> See *Raghu Nath v Budh Nath*, 1930 A. I. R. All. 315; *Qurban Ali v. Majid Husain*, 1925 A. I. R. All. 63; *Mahesh Narain Singh v Biseshwar*, 1931 A. I. J. 432; *Lurkhar v. Ram Baran*, IV U. D. 824; *Tilok Singh v Sheo Nandan Singh*, XI U. D. (H. C.) 41, *Balkaran v Ajjudhia*, 1934 A. I. R. All. 38=XIV U. D. (H. C.) 113=17 R. D. 907; *Partab Koor v Raghu Nath Rai*, IV U. D. 181; *Sukh Nandan v Jugul Kishore* 6 L. R. Rev. 221, *Sri Sita Ranji v. Sant Kumar*, XV U. D. 508, *Sri Lakshman Janaki v Mohammad Khalil*, B. R. 8 of 1933=XV U. D. (B. R.) 1; *Man Mohan Shah v. Nourang*, XVI U. D. 604; *Pohup Singh v. Giridhari Lal*, 16 R. D. 37=XII U. D. 354; *Laiq Singh v. Altaf Husain*, XIV U. D. 160

<sup>4</sup> *Hardeo v. Sher Singh*, I U. D. 418=2 R. and Cr. L. J. 49=34 I. C. 148.

<sup>5</sup> *Jang Bahadur v. Mohammad Yahia*, I U. D. 207; *Jang Bahadur Singh v. Mohammad Yahia*, 33 I. C. 425=I U. D. 355.

him in writing in this behalf; and process served on, or notice given to, such agent shall be as effectual for all purposes as if the same had been served on, or given to, the landholder in person; and all the provisions of this Act relating to the service of process on, or the giving of notice to, a party shall be applicable to the service of process on, or the giving of notice to, such agent.

1. Reproduces section 9 of the Agra Act of 1926 with the addition of the words "in writing" between "him" and "in this behalf."

2. **As otherwise provided by the Code of Civil Procedure.**—See List II to the Second Schedule

3. **In proceedings governed—Code.**—The provisions of the Civil Procedure Code apply only to proceedings governed by it. In other cases, an authorised agent may act for the landholder merely by virtue of his authority. For instance, he may realise rents, grant receipts, enter into contracts of tenancy, consent to improvements, etc.

4. **Agent of landholder.**—Except in respect of Court proceedings, and of levying distress, which require special forms of appointment for agents, any act which a landholder may do may be done by an agent authorised by him in this behalf. For instance, a lambardar is the agent of the co-sharers in respect of the management of the mahal or patti. He can sue for arrears or enhancement of rent, for ejectment, etc. But as a lambardar has not necessarily the same meaning as proprietor, he cannot, it is submitted, as agent or as proprietor, sue to resume or assess rent-free grants.

5. **Process served etc.**—This modifies O. 3. r. 3 and O. 3. r. 6 of the Civil Procedure Code. Process served on any authorised agent, not necessarily a recognised agent or one appointed (to accept service of process) in writing filed in Court, and residing within the jurisdiction of the court, is good service on the landholder. Notice given to any such agent is also good against the landholder.

6. **Such agent.**—*e. g.*, an agent of landholder authorised by him to do an act required or permitted to be done by the landholder.

7. **All the provisions of the Act, etc.**—The Tenancy Act contains but one special provision for the service of processes, *viz.*, that the service of summons or notice may, if the Local Government so directs, either generally or specially for any local area, be effected either in addition to, or in substitution for, any other mode of service, by forwarding it under a registered cover through the Post Office; and proof of posting and registration raises a presumption of service. In other respects the provisions of O. 5 and O. 16 of the Code apply.

A process or notice may be served on an agent in the same manner as on the landholder. This paragraph amplifies paragraph 2 of O. 3, r. 3 of the Code.

## CHAPTER II.

## SIR

Definition of *sir*. 6. "*Sir*" means—

(a) land which immediately before the commencement of this Act was *sir* under the provisions of the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886 :

Provided that if, at the commencement of this Act, the *sir*-holder is assessed in the United Provinces to a local rate of more than twenty-five rupees, land which was *sir* under the provisions of clause (d) or clause (e) of section 4 of the Agra Tenancy Act, 1926, or of clause (c) or clause (d) of sub-section (17) of section 3 of the Oudh Rent Act, 1886, shall on this Act coming into force, cease to be *sir* unless it was—

(i) before the first day of July, 1938, received otherwise than in accordance with the provisions of section 122 of the United Provinces Land Revenue Act, 1901, or

(ii) before the commencement of this Act, received in accordance with the provisions of that section,

in exchange for land which was *sir* under the provisions of clause (a) or clause (b) or clause (c) of section 4 of the Agra Tenancy Act, 1926, or of clause (a) or clause (b) of sub-section (17) of section 3 of the Oudh Rent Act, 1886 :

Provided further that the provisions of the first proviso shall apply to a *sir*-holder who was not, at the commencement of this Act, assessed in the United Provinces to a local rate of more than twenty-five rupees, if he or his predecessor in interest was so assessed on the 30th June, 1938, unless the local rate assessed on him has been decreased by resettlement or by revision of settlement or unless since that day he obtained his *sir* rights by succession or survivorship :

Provided also that if the land to which the provisions of the first proviso apply was joint *sir* of several *sir*-holders and all such joint *sir*-holders are not *sir*-holders to whom such provisions apply, such land shall not cease to be *sir* at the commencement of this Act, but shall remain *sir* until that portion of it which is the *sir* of those joint holders to whom such provisions apply is demarcated under the provisions of this Act ;

(b) land which was *khudkash* and which is demarcated as *sir* under the provisions of this Act.

*Explanation*—If any portion of the land revenue assessed on the *sir*-holder's land has been remitted owing to a fall in the

price of agricultural produce, the local rate payable by him shall, for the purposes of this section, be deemed to have been reduced in the same proportion.

1. The section is different from the provisions of the Agra and Oudh Acts, sections 4 and 3 (17) respectively. It classes as *sir* (a) land which was immediately before the commencement of this Act, *sir* under the provisions of the repealed Acts, and (b) *khudkash* land at that date which is demarcated as *sir* under the provisions of this Act.

We must therefore hark back to the definitions under the two earlier Acts. In Agra, *sir* was thus defined or described in section 4 of the Act of 1926 :—

“ *Sir* ” means—

- (a) land recorded as *sir* of a landholder or a permanent tenure-holder in the last record-of-rights framed before the first day of January, 1902, and continuously so recorded since, or which but for error or omission would have been so continuously recorded ;
- (b) land cultivated continuously for twelve years before the first day of January, 1902, by the landlord or by the permanent tenure-holder himself with his own stock, or by his servants, or by hired labour ;
- (c) land recognized by village custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers ;
- (d) land which at the commencement of this Act was being cultivated by the landlord or permanent tenure-holder himself with his own stock, or by his servants or by hired labour, and which was recorded as the *khudkash* of the landlord or permanent tenure-holder in the agricultural year immediately preceding the agricultural year in which this Act came into force :
- (e) land which has been continuously cultivated by the landlord or permanent tenure-holder himself with his own stock, or by his servants, or by hired labour for a period of ten years, commencing at any time after the commencement of this Act, and has, on the application of the landlord or permanent tenure-holder, as the case may be, been declared and demarcated as the applicant's *sir* by the Collector ;

Provided, first, that the area of *sir* which may be acquired by a landholder or permanent tenure-holder under sub-clause (e) when added to the area which is already the *sir* of the landlord or permanent tenure-holder under sub-clauses



(a), (b), (c) and (d), shall not exceed in the aggregate the following scale ;

If the cultivated area in the mahal owned by the landlord or held by the permanent tenure-holder is not more than thirty acres.	Fifty per cent. of such area.
If such area is more than thirty but not more than six hundred acres,	As above on thirty acres and fifteen per cent. on the balance.
If such area is more than six hundred acres.	As above on six hundred acres and ten per cent. on the balance.

Where the landlords of a mahal do not own specific areas in severalty, the cultivated area owned by each landlord in the mahal shall, for the purpose of the scale, be deemed to be such portion of the mahal as is proportionate to the extent of his proprietary right in the mahal :

Provided, secondly, that a landlord or permanent tenure-holder who exchanges *sir* for tenants', or other land, whether voluntarily or under the order of a court, shall acquire the same right in the land which he receives as he had in the land which he gives in exchange.

Section 3 (17) of the Oudh Act defined *sir* as follows :

' Sir ' means—

- (a) land which for the seven years immediately preceding the passing of this Act had been continuously dealt with as *sir* in the distribution of proprietary or under-proprietary profits and charges ;
- (b) land which for the seven years immediately preceding the passing of this Act had been continuously cultivated by the proprietor or under-proprietor himself, or by his servants, or by hired labour ;
- (c) land which at the commencement of the Oudh Rent (Amendment) Act, 1921. was being cultivated by the proprietor or under-proprietor himself, or by his servants or by hired labour, and which was recorded as the *khudkasht* of the proprietor or under-proprietor in the agricultural year immediately preceding the agricultural year in which the Oudh Rent (Amendment) Act, 1921, came into force :
- (d) land which has been continuously cultivated by the proprietor or under-proprietor himself, or by his servants or by hired labour for a period of ten years, commencing at any time after the commencement of the Oudh Rent (Amendment) Act, 1921 ;

Provided, firstly, that the area of *sir* which may be acquired in a village by a proprietor or under-proprietor under clause (d), when added to the area which is the *sir* of the proprietor or under-proprietor

under clauses (a), (b) and (c), shall not exceed, in the aggregate, one-tenth of such portion of the total cultivated area of the village as is proportionate to the extent of his proprietary or under-proprietary right in the village :

Provided, secondly, that land which was recorded as *sir* at the last settlement prior to the passing of this Act and has been continuously so recorded since, shall be presumed to be land of the class mentioned in clause (a) till the contrary is proved :

2. Which was *sir* shows that land which was *sir* under the definitions but had ceased to be so under the provisions of those Acts, and had not regained its character, before the commencement of this Act, will not come under the conception of *sir*. Section 7 of the Agra Act and Provisos three and four of section 3 (17) of the Oudh Act show when and how the loss and regaining of character took place.

3. The definitions in the two provinces were, under the Acts of 1926 and 1886, practically the same, except as to the number of years. Clause (a) of the Agra Act had its echo in the second proviso in the Oudh Act, clause (b) in clause (b), clause (c) in clause (a), clause (d) in clause (e), clause (e) in clause (d), and the first proviso in the first proviso. It will however be better to consider the matter in each of the provinces separately.

In Agra (i) Clauses (a), (b) and (c) of the Act of 1926 reproduced the definition contained in section 4 (12) of the Land Revenue Act, with the addition of a permanent tenure-holder in the category of proprietors in clauses (a) and (b). Even before the Act of 1901, if land ceased to be recorded as *sir* for a considerable time, it ceased to be *sir*.<sup>1</sup> *Sir* belongs to a landlord or a permanent tenure-holder and in clause (c) to a co-sharer. Landlord is defined in section 3 (12) as the proprietor of a mahal or of a share or specific plot therein. Hence, now, it is possible for a plot proprietor to have *sir* though he may not own any share in the mahal. For instance, where on a sale, the vendor reserves specific *sir* plots to himself, he is a *sir*-holder thereof.

(ii) *Record of Rights* does not mean the annual registers but the record prepared at a settlement.<sup>2</sup> Land not recorded as *sir* in a record of rights before 1902 is not *sir* and it cannot be shown that it ought to have been so recorded.<sup>3</sup> Where at the last settlement before 1902, the entry of *sir* was altered into occupancy land, as the result of an agreement between the mortgagee in possession and the *shikmi*, and behind the proprietor's back, but the latter had the chance of safeguarding his interests during record operations, the *sir* character was held to have gone.<sup>4</sup> Where a land is recorded as *sir* at settlement, the tenant of it cannot impugn the entry, as he could have raised the question then.<sup>5</sup>

<sup>1</sup> *Prao v. Hafiz*, B. R. 9 of 1883; *Harpal v. Bulchand*, 7 All. 586.

<sup>2</sup> *Jaleshar v. Ram Rao*, IV U. D. 216.

<sup>3</sup> *Raghunandan Singh v. Mathura Prasad* B. R. 19 of 1919=III U. D. 716

<sup>4</sup> *Bishal Singh v. Mathur Singh*, IX U. D. 129=10 L. R. Rev. 244.

<sup>5</sup> *Makund Singh v. Ajudhia*, 1938 A. L. J. (B. R.) 54=1938 R. D. 596.

This is not consistent with *Ramkaran Singh v. Ram Baran*,<sup>1</sup> where a party to a partition who had taken the land later as tenant or trespasser was held entitled to challenge the *sir* entry, the reason assigned being that *sir* rights are acquired only under the provisions of law, and cannot be granted by a party by an act or omission, so that if land which was not *sir* was entered as such a party to the partition could show that the entry was wrong. For meaning of *recorded as sir*, see *infra* p. 94. Under clauses (a) and (b), no land could be regarded as *sir*, unless it had acquired that character on the thirty-first of December, 1901,<sup>2</sup> and under clause (b) cultivation must have been personally by the landlord and not by sub-tenant.<sup>3</sup> The expression *the landlord* showed that a mere co-sharer could not acquire *sir* rights under clause (b).

Under the Act of 1901 groveland was not land, and hence the provisions thereof which depended on the word *land* did not apply; but under the Land Revenue Act, *e. g.*, for purposes of section 36, groveland which was *sir* virtually was *sir* and therefore land.<sup>4</sup> Now, land includes groveland: and hence the fact that a grove has been planted on *sir* land will not *per se* affect its character as *sir*.<sup>5</sup> A guava grove recorded in 1333 F. as *khudkash* of A and in his possession in 1334 was A's *sir*, and hence exproprietary rights could arise on its sale.<sup>6</sup>

The expropriator retained his rights to dispose of the trees in the grove which an expropriatory tenant could not.<sup>7</sup> The soundness of this view was open to question, as a grove or the trees in it partake of the nature of the land in the expropriatory holding which is intransferable.<sup>8</sup>

The Board held that a mortgage before the first of January, 1902 with or without possession had no effect whatsoever on the *sir*:<sup>9</sup> so a gift before 1902;<sup>10</sup> so planting of a grove.<sup>11</sup>

<sup>1</sup> 1938 A. L. J. (B. R.) 56.

<sup>2</sup> *Dukhi v. Mitai*, V U. D. 225=1922 R. C. 263=3 L. R. Rev. 508.

<sup>3</sup> *Dukhi v. Mitai*, 1929 A. I. R. All. 335=V U. D. 225.

<sup>4</sup> See *Hait Ram v. Khuda Baksh*, 2 L. R. Rev. 121.

<sup>5</sup> *Murari Lal v. Amar Nath*, 14 L. R. Rev. 806=XIV U. D. 413.

<sup>6</sup> *Basanti v. Suraj Din*, XIV U. D. 354; *Murari Lal v. Amar Nath*, 14 L. R. Rev. 806=XIV U. D. 413.

<sup>7</sup> *Jhamola v. Majibunnissa*, II U. D. 266=3 R. and Cr. L. J. 225.

<sup>8</sup> See *Hafizan v. Chokhoo Lal*, VIII U. D. (H. C.) 131.

<sup>9</sup> *Ganga Prasad v. Tundi*, I U. D. 413; *Sultan Husain v. Sewak Singh*, B. R. 12 of 1914=2 O. L. J. 411; *Shahzada Singh v. Pemi Singh*, 9 L. R. Rev. 14=1927 R. C. 445.

<sup>10</sup> *Badlay v. Jasharan*, III U. D. 366=4 R. D. 186.

<sup>11</sup> *Shyam v. Anant Ram*, 17 I. C. 302, *Lachmi Narain v. Jai Kishan*, III U. D. 159, *Chandra Sen v. Bhagwan Singh*, 1926 A. I. R. Oudh 117=3 O. W. N. 51=91 I. C. 938; *Kusher Singh v. Madra*, XII U. D. 153=11 L. R. Rev. 369; *Nand Ram v. Chosi Lal*, 4 O. W. N. 955=105 I. C. 466=1927 R. C. 565=IX U. D. (H. C.) 166=9 L. R. Rev. 163; *Ram Chandra v. Thakur Gopal Lalji*, 1938 A. L. J. (B. R.) 58.

(iii) *Sir* may be lost by adverse possession. *A*, the lambardar, owned an 8 annas out of 10 annas 8 pies share in a patti, *B*, *M*, *N* and *P* being the owners of the 2 annas 8 pies share. *A* in 1902 usufructually mortgaged his 8 annas share and the entire *sir* appertaining to the 10 annas 8 pies share to *C*. He had been in possession of the entire *sir* of the 10 annas 8 pies share. In 1905, in a dispute between *B* and *C*, the Revenue Court treated the entire *sir* as that of *A*, recorded it in his name, and directed that it should be entered as his exproprietary tenancy, accruing on the mortgage of 1902, and fixed the rent. In 1919, *A*'s son and heir *L* executed a usufructuary mortgage of the 8 annas share in favour of *D*, expressly excluding the *sir* land; and a little later, sold the 8 annas share to *C*, relinquishing his exproprietary rights. This sale was pro-empted by *M* in 1921, when he transferred his rights to *E* in 1922. In the same year, *D* as puisne mortgagee, redeemed by suit the mortgage of 1902, from *C*, and obtained possession in 1923. The *sir* was specially used for and all the persons mentioned above were parties to the suit. *D* sold his right to *F*. *D* and *F* now sued for a declaration that they were exclusively entitled to sue for rent from the tenants of the *sir*, the principal defendants being *E*, *C*, *B*, *M*, *N* and *P*. It was held that since for more than 12 years *A* had been treated as the sole owner of the *sir* and expropriatory tenant paying rent to *C*, *B*, *M*, *N* and *P* had no *sir* left, and that *D* and *F* had the sole right to collect the rents of *A*'s *sir*, which *C* was entitled to collect.<sup>1</sup>

The case of *Dhanpati v Badri Singh*<sup>2</sup> is interesting. There, *A*, the owner of a 4 annas share, sold three annas, but exempted his entire *sir* from the operation of the sale-deed. In 1890 he sold his remaining one anna share with the *sir* corresponding to that one anna share, but did not have it mentioned that his proprietary rights in the *sir* corresponding to the share previously sold and exempted from the sale would remain intact. The revenue records from that date onwards showed him as expropriatory tenant of the entire *sir* of his 4 annas. He took no steps to have himself recorded as owner of any miscellaneous rights or plot proprietor. He also admitted in certain civil proceedings that he was expropriatory tenant as entered in the revenue papers. *A* had also been paying a yearly sum to the zamindars, but his plea was that part of this was as revenue dues on the exempted *sir*. The court held that since *A* had allowed the entry of his name as expropriatory tenant for over 40 years, his proprietary rights probably became extinguished, and that *A* was now merely an expropriatory tenant.

Where a land, which had once been *sir*, had been declared by a competent revenue court to be no longer so and to have become the occupancy land of the person in possession, it cannot again be entered as *sir*.<sup>3</sup>

<sup>1</sup> *Raghu Nandan Prasad v Ajudhia Singh*, XI U. D (H. C) 275=14 R. D. 522

<sup>2</sup> 1935 A. I. R. All. 729=XVI U. D. 356=1935 R. D. 303=156 I. C. 53.

<sup>3</sup> *Bishwa Nath v. Ram Dasi*, 15 L. R. Rev. 66=18 R. D. 58. :

There is a conflict of view as to whether a perpetual lease of *sir* land destroys its character as such. The conflicting cases are noted in the footnote<sup>1</sup>

In *Badal v. Aminuddin*,<sup>2</sup> the Board further held that since at the time of the grant of the perpetual lease of *sir* land, the lessee did not become a sub-tenant but became the tenant-in-chief of the *sir*, his status cannot be altered into that of sub-tenant by the sale of the lessor's proprietary interest, which made him the exproprietary tenant of the land : and hence he remained the tenant-in-chief of the lessor and had to pay rent to him and not to the purchaser of his proprietary interest, a rather curious position—a tenant-in-chief under another tenant-in-chief

(iv) *Clause (b)—who may acquire sir.* Under the earlier Acts land cultivated for 12 years by the proprietor became his *sir*. Under the Act of 1901, the period of 12 years must have been completed before the first of January, 1902. The cultivation may be by the proprietor personally with his own stock, or by his servants, or by hired labour. An idol cannot hold *sir*.<sup>3</sup>

A thekadar,<sup>4</sup> or a mortgagee,<sup>5</sup> or a rent-free grantee,<sup>6</sup> or a grove-holder<sup>7</sup> is not a landlord, and cannot acquire *sir* rights. An owner of miscellaneous plots,<sup>8</sup> or a *muqāḍar* who has acquired proprietary rights,<sup>9</sup> may acquire *sir* rights.

(v) *Recorded as sir.* The expression "recorded as *sir*" in clause (a) does not necessarily imply that the word *sir* should be used. It

<sup>1</sup> Cases holding that *sir* character is destroyed :—*Brij Nath v. Pubbar*, III U. D. 188 ; *Ganesh v. Raj Kumar*, II U. D. 169 ; *Debi Das v. Hardeo*, XI U. D. 19=10 L. R. Rev. 221 ; the reason being that by granting a perpetual lease the proprietor severed all connections with the land. The case would be different if he reserved a right of re-entry in certain events, *Mangan v. Paras Ram*, II U. D. 370. Cases holding that *sir* character is not destroyed :—*Lakhu v. Bajrangi Lal*, II U. D. 449 ; *Mangan v. Paras Ram*, II U. D. 370 ; *Jogendra Buz Singh v. Bejoy Bahadur Singh*, XI U. D. 170 (Oudh Case) ; *Badal v. Aminuddin*, 13 L. R. Rev. 110=XIII U. D. 119 ; *Sumer v. Jwal Prasad*, XVI U. D. 537=1935 R. D. 458 ; *Lal Jogendra Buz Singh v. Bejoy Bahadur Singh*, XV U. D. 170 ; the reason being that a lease is not a transfer which gives rise to an exproprietary tenancy which is destructive of *sir*.

<sup>2</sup> XIII U. D. 119.

<sup>3</sup> *Chatter v. Sri Thakur Rudra Mahadeoji*, 5 L. R. Rev. 128=1924 R. C. 137=VI U. D. 102=6 Rev. and Cr. L. J. 223.

<sup>4</sup> *Krishna Chandra Prasad v. Firingi*, IV U. D. 77.

<sup>5</sup> *Hira Ram v. Mahadeo*, III U. D. 175 ; *Phula v. Narain Das*, III U. D. 294 (either for himself or the mortgagor)

<sup>6</sup> *Jang Bahadur v. Shambhu Bahadur*, VIII U. D. 64

<sup>7</sup> *Bhagwan Leen v. Pore Lal*, 18 A. L. J. 510

<sup>8</sup> *Chauthu v. Bondraban*, II U. D. 236.

<sup>9</sup> *Naurang Gir v. Sumeran Parbat*, V U. D. 84=1922 R. C. 262.

means "recorded in the manner in which it is wont to be recorded,"<sup>1</sup> e.g., as "in the hereditary cultivation" of the zamindars,<sup>2</sup> or as his *gharujot* in the district of Jalaun.<sup>3</sup>

Land recorded as *khudkasht* for over 40 years and not being cultivated by a *shikmi*,<sup>4</sup> or land of a *mutafariga* owner recorded as *khudkasht*, it being the custom that *sir* was entered only in respect of land cultivated by *khalsa* owners,<sup>5</sup> or land entered in Mainpuri district as the holding of *khewatdar*, with the name of a person cultivating as *shikmi*,<sup>6</sup> has been held to be recorded as *sir*.

Where an area is sparsely populated and permanently settled and there has been no revision of records since the last settlement about 100 years ago, the entry of land as *sir* in 1306 *Fasli* and onwards, and not cultivated by sub-tenants is good and strong evidence that the land is *sir* within section 4 (a) of the Act of 1926.<sup>7</sup>

Where a land has, prior to the passing of the Act, being judicially found by a revenue court to be *sir*, the restricted definition will not affect its character, unless it has subsequently lost it.<sup>8</sup> And land from which the landholder ejected a tenant cannot be *sir* unless the conditions of the definition are fulfilled.<sup>9</sup>

If land was recorded as *sir* at settlement before the Act of 1901, and has been continuously recorded as *sir*, though as a matter of fact it has lost its character as the result of transfer, it is still *sir*,<sup>10</sup> and it is not necessary to prove that the land had been actually cultivated by the proprietor for 12 years before 1902,<sup>11</sup> though the correctness of the entry may be disproved under section 57 of the Land Revenue Act.<sup>12</sup>

Until disproved, the entry is sufficient evidence of the land being *sir*.<sup>13</sup>

<sup>1</sup> *Bishunath v. Gulkai*, 5 L. R. Rev. 135.

<sup>2</sup> *Lalla Kunwar v. Racha Singh*, 1 L. R. 108=11 U. D. 81=4 R. D. 546.

<sup>3</sup> *Makund Singh v. Ajodhia*, XIX U. D. 188=1938 R. D. 596.

<sup>4</sup> *Jugroop v. Purtabi*, V U. D. 168=3 L. R. Rev. 416=1922 R. C. 381.

<sup>5</sup> *Sita Ram v. Sukhoo*, IV U. D. 259=1 L. R. Rev. 133; *Dansahai v. Than Singh*, 7 L. R. Rev. 329=1926 R. C. 396.

<sup>6</sup> *Daryai v. Gulzari Lal*, IV U. D. 309=7 Rev. and Cr. L. J. 252=6 R. D. 507; *Bishunath v. Gulkai*, 5 L. R. Rev. 135.

<sup>7</sup> *Oudh Nath v. Mewa*, XX U. D. 343=1939 R. D. 380.

<sup>8</sup> *Bharosa v. Jairam*, 1 L. R. Rev. 57.

<sup>9</sup> *Lachmi Narain v. Jharkandi*, 1 L. R. 62.

<sup>10</sup> *Girdhari Lal v. Ram Gopal*, X U. D. 46 (doubtful view).

<sup>11</sup> *Lal Singh v. Dhanpat*, V U. D. 590=10 Rev. and Cr. L. J. 20=4 L. R. Rev. 387; *Hira Singh v. Sita Ram*, V D. 218.

<sup>12</sup> *Mahesh Prasad v. Radhika Prasad*, B. R. 17 of 1912; *Pem Kunwar Raj v. Ram Kishan*, B. R. 9 of 1913; *Narain v. Vyia Nand Gajraj*, 13 L. R. Rev. 241=B. R. 4 of 1932=XIII U. D. (B. R.) 48; *Udit Ahir v. Jugal Kishore*, XIII U. D. 158; but see *Girdhari Lal v. Ram Gopal*, X U. D. 46.

<sup>13</sup> *Rikhai Rao v. Umrao*, V U. D. 510=1923 R. C. 10.

An entry in the year previous to the settlement that the land was held by sub-tenants is not sufficient to rebut the settlement entry of *sir*.<sup>1</sup> Where *A* acquires a title to a zamindari by adverse possession, and *sir* continues to be recorded as such, it retains its character in the hands of *A*.<sup>2</sup> The Board's rulings 17 of 1912 and 9 of 1913 have been doubted in *Smirkha v. Ram Tahal Rai*.<sup>3</sup>

Where *sir* is sold as *sir* after 1873, it becomes *khalsa* land, and is no longer *sir* in spite of continued entry of its character as *sir* in revenue papers.<sup>4</sup>

The fact that the zamindar cannot prove the circumstances under which the land acquired the character of *sir* does not rebut the presumption.<sup>5</sup>

Nor can it be rebutted by the production of a contrary entry before the settlement.<sup>6</sup>

(ri) The expression "*continuously so recorded since*" is doubtful inasmuch as it leaves open the name of the recorder. In *Ram Jas Singh v. Sheo Shankar Singh*,<sup>7</sup> an entry of the *sir* of the vendor as that of the vendee made by the patwari was ignored.

(ru) *But for error.* The case of *Dharam Dutt v. Lachhman*,<sup>8</sup> is a good instance. There, a land was recorded as *sir* of *A* at the settlement of 1292 F. *A* mortgaged it with possession to *B*. At the settlement of 1321 F., the entry as *sir* which had continued up to then was expunged on the wrong assumption that the mortgage to *B* was made after 1901, and destroyed the *sir* right. It was held that the land continued to be *sir* in spite of the entry in 1321.

A wrong entry by patwari showing *sir* as ordinary tenancy land cannot change the character of *sir*.<sup>9</sup>

A tenant who takes land recorded as *sir* and which has been so recorded for half a century cannot contend that the land is not *sir*.<sup>10</sup>

Where the entry in respect of same land was, at the settlement before 1901 as *sir*, an obviously wrong entry, and the patwari papers

<sup>1</sup> *Nawal Kishore v. Muleshar*, II U. D. 468; *Durga Prasad v. Sukha*, 5 L. R. Rev. 317—VI U. D. 267.

<sup>2</sup> *Bhagwati Saran Singh v. Rabi Singh*, 31 I. C. 893 - I U. D. 63

<sup>3</sup> V U. D. 440, 9 Rev. and Cr. L. J. 209—4 L. R. Rev. 198—1923 R. C. 134.

<sup>4</sup> *Sadho Ram v. Chhote Lal*, X U. D. 129.

<sup>5</sup> *Baz Bahadur v. Bindraban*, XI U. D. 111—10 L. R. Rev. 312.

<sup>6</sup> *Hira Singh v. Sita Ram*, V U. D. 218—3 L. R. Rev. 536—1922 R. C. 251—9 R. and Cr. L. J. 6.

<sup>7</sup> B. R. 2 of 1900

<sup>8</sup> 12 L. R. Rev. 145—15 R. D. 416.

<sup>9</sup> *Kuldip Singh v. Ganga*, XIV U. D. 442.

<sup>10</sup> *Sadho Saran Singh v. Ghosi Ram*, XII U. D. 46.

described it in some years as the exproprietary land of the old proprietors who had sold their exproprietary rights prior to the settlement, and in other years as the tenancy-in-chief of the actual cultivators, no inference can be drawn that exproprietary rights were extant.<sup>1</sup>

Where certain plots were continuously recorded as *sir* although the share to which they appertained had been sold four years before the settlement and no exproprietary rights were claimed, they were held to be *sir* within clause (c).<sup>2</sup>

Since it is permissible to prove that land entered as *sir* from before 1902 was not *sir*, a tenant of such land may prove that he is a non-*sir* tenant, with all the rights and liabilities of such tenant, *e.g.*, that he is an occupancy or a statutory tenant of the land entered as *sir*, in spite of the fact that he acted in the past as if the land was *sir*.<sup>3</sup>

(viii) *Clause (b)*. The cultivation must have been as proprietor during the entire period of twelve years, and cultivation as tenant prior to the acquisition of proprietary rights must be excluded.<sup>4</sup> Hence a claimant of exproprietary rights has to prove that the cultivation was by the proprietor for 12 years prior to the commencement of 1902.<sup>5</sup> The fact that land was recorded as *sir* at the revision of records, when it could not have been in the proprietor's possession for 12 years at that date, will not make it *sir*.<sup>6</sup>

An entry for 35 years that certain land was *khudkasht* of the zamindar is sufficient to prove personal cultivation for 12 years.<sup>7</sup>

Land shown at the last settlement as the occupancy holding of a co-sharer—and there is no certainty that the entry is incorrect—and A is shown as the *shikmi*, the land cannot be deemed as *sir* of the co-sharer unless 12 years' cultivation is proved.<sup>8</sup> See notes to clause (b) of the Oudh definition, *infra*, p. 104.

<sup>1</sup> *Jehali v. Mukat Nath Das*, 12 L. R. Rev. 57.

<sup>2</sup> *Narayangur v. Dasrath Rai*, XI U. D. 217=11 L. R. Rev. 332. Said to be bad law in *Udit Ahir v. Jugal Kishore*, XIII U. D. 158.

<sup>3</sup> *Bansdeo Tewari v. Ram Sakal Rai*, XVI U. D. 17.

<sup>4</sup> *Smirkha v. Ram Tahal*, V U. D. 440; *Cheda Lal v. Gendan*, VI U. D. 354=6 L. R. Rev. 29=1925 R. C. 50=11 R. and Cr. L. J. 65; *Sheo Naik Rai v. Muneshar*, B. R. 2 of 1930=XI U. D. (B. R.) 8=11 L. R. Rev. 276. The contrary decisions in *Narain v. Jhandu*, B. R. 1 of 1927=VIII U. D. (B. R.) XXVI=8 L. R. Rev. 289=1927 R. C. 324; *Shibba v. Lajja*, II U. D. 246 being distinguishable as the words "as proprietor and "as such" were not to be found in the Act of 1901 and in the earlier Acts

<sup>5</sup> *Dharam Dutt v. Lachhman*, 12 L. R. Rev. 145=15 R. D. 416; *Murari Lal v. Joti Prasad*, XVII U. D. 52=1936 R. D. 87.

<sup>6</sup> *Sundar v. Girdhar Das*, XIV U. D. 430=14 L. R. Rev. 206; *Pohap Singh v. Moti Lal*, 14 L. R. Rev. 216, *Muh. Badruddin v. Pran*, XIV U. D. 121=14 L. R. Rev. 291=117 R. D. 407.

<sup>7</sup> *Ram Chandra Prasad v. Beni Prasad*, XVII U. D. 81.

<sup>8</sup> *Abhilakh v. Sri Bhagwat Naik*, 14 L. R. Rev. 37=XIV U. D. 18.



(ix) *Clause (c)*—Land recognised by village custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers, is *sir*. These two conditions must exist. All the land held by a co-sharer, even where the *bighadam* tenure extends, is not necessarily his *sir*, but only so much of it as is recognised as his special holding and treated as such in the distribution of profits. The rest may be *khulkaash* but not *sir*.<sup>1</sup> A mere record of certain land as *sir* at a partition is not sufficient to bring it under the clause.<sup>2</sup>

A purchased *sir* and proprietary rights in 1869 when *sir* rights were transferable. In 1875, when *sir* rights were not transferable, B purchased  $3\frac{1}{2}$  annas of the proprietary right, and was wrongly shown as proprietor of the remaining  $3\frac{1}{2}$  annas of the *sir*. He has been so treated ever since. This may be taken that for such a long time the land of B has by village custom being recognised as the special holding of B and treated as such in the distribution of profits or charges among the co-sharers and was therefore *sir* of B as defined in *clause (c)*.<sup>3</sup>

If the *sir* is recorded as the joint *sir* of the purchaser of a share and of the other co-sharers, it is not the exclusive *sir* of the purchaser.<sup>4</sup>

(x) An accretion to *sir* is *sir* but the zamindar must get it recorded and hold it as such.<sup>5</sup> If omission to get it recorded as *sir* is accompanied with letting it be recorded as tenancy land with a corresponding belief in the letting that it is not *sir*, it has lost its character.<sup>6</sup>

(xi) *Clauses (d) and (e)* were new. These allowed acquisition of *sir* in the following cases:—

(i) in respect of land (a) cultivated at the commencement of the Act of 1926 by the proprietor or permanent tenure-holder himself with his own stock, or by his servants or by hired labour, (b) the land being recorded as his *khudkaash*, (c) in the agricultural year ending before 6th September, 1926. All these three items (a), (b) and (c) had to be proved and to co-exist.<sup>7</sup>

(ii) In respect of land cultivated, (a) continuously, (b) by the proprietor or permanent tenure-holder himself with his own stock, or by his servants, or by hired labour, (c) for a period of ten years, commencing at any time after the commencement of the Act, (d) such land being on the application of the proprietor or permanent tenure-holder, as

<sup>1</sup> *Sukhrum v. Jawahir*, 1 A. W. N. 80.

<sup>2</sup> *Murid v. Kashia*, 1 U. D. 311=31 I. C. 855.

<sup>3</sup> *Mathura Das v. Muh. Yusuf*, XIII U. D. 190=14 L. R. Rev. 396.

<sup>4</sup> *Narain v. Mahadeo*, XI U. D. 218.

<sup>5</sup> *Sahdeo v. Balbhadar*, II U. D. 535.

<sup>6</sup> *Sahdeo v. Balbhadar*, II U. D. 535.

<sup>7</sup> *Jai Ram Singh v. Mitter Sen*, XII U. D. 131, *Heera Lal v. Gaya Charan*, XV U. D. 443=15 L. R. Rev. 681.

the case may be, declared and demarcated as the applicant's *sir* by the Collector in accordance with the provisions laid down in clause (e).

(*xii*) Landlord of section 4 of the Act of 1926, as compared with a landholder in clause (a) and the first proviso should be noted.

It must be admitted that the definition of *landlord* in section 3 "the proprietor of a mahal or of a share or specific plot therein" and the use of the word *the* in clauses (b), (d) and (e) and in the first proviso to clause (e) of section 4 of the Act of 1926, may tend to create some confusion.

A Bench of the High Court has taken the view that cultivation for the purposes of clause (d) need not be by the entire body of co-sharers who own a mahal or a separate portion of it.<sup>1</sup> There, some of the underproprietors of certain plots purchased, presumably, the right to immediate possession of the plots from the tenant thereof, obtained and remained in possession for three or four years prior to the date of the litigation which commenced some time in or about 1930, having got their names recorded in respect of them in 1333 Fasli, *i. e.*, prior to the 30th of June, 1926. The other members of the underproprietary body sued them for joint possession and the points of attack were that (i) as the names of the purchasers were not recorded in the papers of 1332 Fasli (*i. e.*, before January 7th, 1925) (ii) the purchasers were only some of the underproprietors, and (iii) they were mere underproprietors, and they could not claim the benefit of clause (d). Points (i) and (iii) were obviously untenable, for all that is necessary is that the names should have been recorded in the agricultural year prior to first of July, 1926, and an underproprietor is a proprietor and therefore a landlord. As to point (ii), the Bench observed "Probably the reason why the definite article is used was because it was intended to emphasise that the landlord must have a proprietary interest in that very land and should not merely be a landlord in the village. It may also be that the definite article was used because in the first clause (a) an indefinite article has been used. Reading the whole section there can be no doubt whatever that a single proprietor of land can acquire *sir* rights in the *khudkasht* lands. Section 4 itself refers to landlords having specific area in severalty and the very definition of *sir* right at the end of the section shows that it includes the right to exclusive possession of the *sir* against co-sharers of the *sir*-holder in the proprietary rights. This means that an individual proprietor can acquire *sir* rights, which would give him the right to retain exclusive possession of the *sir* against all the other co-sharers. This definition of *sir* right would have no meaning if *sir* rights can be acquired and owned only by the entire body of the co-sharers taken together."

Where a joint Hindu family is the landlord and the management of the property is also on behalf of the joint family (consisting of father

<sup>1</sup> *Dhanu Kuer v. Jai Jai Ram*, 1934 A. I R. All. 823—1934 A. L. J. 1275=XV U. D. (H. C.) 133=15 L. R. Rev. 423=18 R. D. 311.

and son), the name of the father alone being entered and with him being the names of the trustees (father being one, of them) subsequently appointed to manage their joint family estate the joint family is the landlord. From before 1932 certain land was entered as *khudkasht*. It was held that the land was of the joint family and became the *sir* of the father and son and not of the father alone.<sup>1</sup>

A was co-sharer of 2 annas and mortgagee in possession of 14 annas share in a village, and after ejecting tenants brought some of the tenants' lands in his cultivation. Some of these lands were recorded as his *sir* as being in his occupation on 26th September 1926 and the rest as his *khudkasht*. Since his possession of 14 annas was as mortgagee, he is a *sir*-holder to the extent of two annas, the subsequent mortgagees being the *sir* and *khudkasht*-holders of the rest entitled to joint possession thereof on redemption.<sup>2</sup>

Landlord includes an inferior proprietor of the plots over which *sir* rights are claimed,<sup>3</sup> but not a rent free grantee to whom section 186 of the Act of 1926 (present section 192) applied and, who had not been declared a proprietor under the section<sup>4</sup> or a mortgagee.<sup>5</sup>

Was being cultivated by the landlord.—This is essential. Mere recording of names is not enough.<sup>6</sup> Only the actual area cultivated by the landlord, and not the fallow part of an area recorded as his *khudkasht* would become his *sir*.<sup>7</sup>

If A was recorded prior to January, 1926, and was in cultivation of *khudkasht* on September 7, 1926, it was immaterial how he obtained possession.<sup>8</sup> But the words "as such" show that he must have cultivated as the landlord. If a land was recorded as *khudkasht* in 1332 Fasli and no sub-tenants were indicated in respect of that or the following year it was taken as cultivated by the landlord during the two years.<sup>9</sup>

Where one of two co-sharers executed in 1914 a mortgage of his share to the other, giving the latter full right to eject and admit tenants, and the mortgagee ejected tenants and took the lands in his own *khudkasht*, and was in possession of the land in 1333 and 1334 Fasli became the *sir*-holder thereof. Hence a subsequent mortgagee of the mortgagor

<sup>1</sup> *Indrajit Singh v. Gur Kij Singh*, 1936 A. L. J. 993=1936 A. I. R. All. 671=1936 B. D. 285=XVII U. D. (H. C.) 161.

<sup>2</sup> *Punjab Sugar Mills v. Lakshman Prasad*, 1937 A. L. J. 501=1937 A. I. R. All. 321=XVIII U. D. (H. C.) 88=1937 R. D. 226.

<sup>3</sup> *Dhana Kuer v. Jai Jai Ram*, XV U. D. (H. C.) 133.

<sup>4</sup> *Kundan v. Ram Sahai*, B. R. 8 of 1934=XV U. D. (B. R.) 27=15 L. R. Rev. 713 See also *Janq Buhadur v. Shambhu Buhadur*, VIII U. D. 64; *Gur Prasad Singh v. Dudh Nath*, B. R. 11 of 1926.

<sup>5</sup> *Punjab Sugar Mills v. Lachman Prasad*, XIX U. D. 176=1938 R. D. 431.

<sup>6</sup> *Sukhpal v. Bal Kishan*, XIV U. D. 318=14 L. R. Rev. 621.

<sup>7</sup> *Kamakhyia Dat Ram v. Hub Lal*, XIII U. D. 187.

<sup>8</sup> *Ram Lochan v. Sri Thakurji*, 1931 A. L. J. 1037=1932 A. I. R. All. 162.

<sup>9</sup> *Gaya Singh v. Bhagwan Das Singh*, XIX U. D. 153=1938 R. D. 38.

cannot be recorded as co-sharer in the *sir* acquired by the prior mortgagee, even though the High Court ordered that the mortgagor was entitled to joint possession of such *sir*, and he obtained formal *dakhal dehani* on the strength of such order, because a mortgagee cannot be a landlord and cannot acquire *sir* rights.<sup>1</sup>

A co-sharer was recorded as a non-occupancy tenant *bila lagan* in his own land in the years 1332 and 1333 Fasli. The entry is of course wrong as a man cannot be his own tenant. The land was *khudkasht* and the entry must be read as regarding the land as his *khudkasht*. Hence under clause (d) it is his *sir*. Lands shown as lying fallow and not actually ploughed and sown cannot be classed as uncultivated, as it may be in the course of good husbandry to allow the land to lie fallow for a period.<sup>2</sup>

Where land was recorded as a zamindar's *khudkasht* in 1333 Fasli but was not actually cultivated by him in 1333, because of famine or the usage of letting land lie uncultivated for a short period in the course of good husbandry, though it was cultivated for 9 previous years and in 1334, with other land as part of *shamil jot jadid*, the interruption is cultivation, and the land is *khudkasht*.<sup>3</sup>

And which was recorded as the *khudkasht* of the landlord. Recording as *khudkasht* of and cultivation by the landlord are both essential.<sup>4</sup> The law does not allow for errors or omissions in the record as it does in clause (a).<sup>5</sup>

The land must have been recorded as *khudkasht* of the proprietor of the *sir*;<sup>6</sup> if it is recorded as *khudkasht* of a person who has ceased to be proprietor and is in possession of a trespasser, it cannot be declared to be *sir*.<sup>7</sup> An entry of proprietor's name as *kabit* with somebody else's name as tenant does not prove *khudkasht*.<sup>8</sup>

In the agricultural year immediately preceding the agricultural year in which the Act of 1926 came into force. The Act of 1926 came into force on 7th September, 1926 i.e., during the agricultural year 1333, which commenced on 1st July, 1926. Hence if the record was made during the agricultural year ending on 30th June, 1926, clause (d) applies. The fact that there was no record in the papers of 1332 Fasli is

<sup>1</sup> *Punjab Sugar Mills v. Lachman Prasad*, XIX U. D. 176=1938 R. D. 416.

<sup>2</sup> *Ram Sarup v. Shankar Dutt*, XIII U. D. 194=14 L. R. Rev. 387.

<sup>3</sup> *Thakuri v. Bhat Balmakund*, XIII U. D. 168=14 L. R. Rev. 50; *Ram Sarup v. Shankar Dutt*, 14 L. R. Rev. 387=XIII U. D. 194.

<sup>4</sup> *Dhania Kuer v. Jai Jai Ram*, XV U. D. (H. C.) 133; *Sarbeshwari v. Harnam Singh*, 1938 A. L. J. (B. R.) 113=XIX U. D. 232=1938 R. D. 661.

<sup>5</sup> *Lakhan Singh v. Babu Ram*, XV U. D. 53=16 L. R. Rev. 75.

<sup>6</sup> *Ram Das v. Sapur Singh*, XVII U. D. 95=1936 R. D. 117 (and not as non-occupancy tenancy holding).

<sup>7</sup> *Kuber Singh v. Jiwa Ram*, XIII U. D. 153=14 L. R. Rev. 82.

<sup>8</sup> *Heera Lal v. Gaya Charan*, XV U. D. 443.

immaterial.<sup>1</sup> Record for the first time in papers of a subsequent year, e.g., 1934, will not do.

A sold his proprietary rights and exclusive *sir* to B. In 1923, a wrong and doubtful entry in respect of the *sir* was "*sir* of C, *khudkasht* of B." The entries since 1923 show possession of B, direct or through tenants. The land cannot be called B's *sir*, nor is it his *sir* under clause (d) as it was recorded as his *khudkasht* in 1933 and 1934 and cultivation by him was not sufficiently proved.<sup>2</sup>

Once *sir* is acquired under clause (d), subsequent events immediately happening do not change its character. The fact that subsequently the proprietors execute fictitious transfers of their proprietary rights in order to cheat creditors, and the transfers are declared void, does not affect their *sir* right or prevent them from claiming it.<sup>3</sup>

A purchased a zamindari share in September, 1924, and began to cultivate some land as his *khudkasht*. In December, 1924, B filed a suit for pre-emption against him, and obtained a decree on 20th April, 1926, which was confirmed on appeal in April, 1929, and deposited the price in May, and obtained possession of zamindari in July 1929. A however continued to cultivate the land mentioned above as his *khudkasht*. The land became his *sir* on 7th September, 1926, as he was then a proprietor and B had not taken his place by depositing the pre-emption price. Hence A cannot be ejected therefrom by B as a trespasser, and the case does not fall under section 52, Transfer of Property Act.<sup>4</sup>

Where an occupancy tenant became the sole proprietor of the area in which his holding was situate, the land in his holding did not at once become his *sir*. He must have cultivated it for the necessary period after the acquisition of proprietary rights. If the land had been let to a sub-tenant, the latter would on acquisition of proprietary rights by the tenant become the tenant-in-chief and might have been a statutory tenant.

(a) *Continuously* i.e. without a break. Letting the land for however short a time within the period of ten years will prevent accrual of *sir* rights. Continuous cultivation also implies that the land will be cultivated every year and every season, according to the nature of the land and the practice of the locality. If land is allowed to lie fallow for a period according to the rules of good husbandry, or is submerged for a season or a year or so in a river, or is not cultivated for a season or two owing to drought or lack of irrigation, will there be break in continuous cultivation? Literally, there would be, but would it be in the sense contemplated by the legislature?

<sup>1</sup> *Dhama Kuer v. Jai Jai Ram*, XV U. D. (H. C.) 133.

<sup>2</sup> *Muneshwar Ram v. Ram Prasad Ram*, XIV U. D. 47=14 L. R. Rev. 212

<sup>3</sup> *Hazari Lal v. Amar Nath Sethi*, 15 L. R. Rev. 240=XV U. D. 192

<sup>4</sup> *Gohar Dhan Das v. Gokul Chand* 13 L. R. Rev. 132=XIII U. D. 85; *secus*, if B had deposited the price before 7th September, 1926, *Jai Ram Singh v. Mitter Sen*, XII U. D. 131.

<sup>5</sup> *Ganga Singh v. Prag Singh* 13 L. R. Rev. 390, XIII U. D. 169.

(xiv) *With his own stock, etc.* Stock in agriculture refers to ploughs, cattle to work it, and seed. The idea seems to be that whether the proprietor cultivates personally or by his servants or by hired labour, the stock used should be his own and not hired, borrowed or stolen. For if *with his own stock* qualifies only *himself*, an absurd position will be introduced, viz., that servants or hired labour may use hired, borrowed or stolen stock, whereas the proprietor cultivating personally must use his own stock.

(xv) A Collector to whom an application to declare and demarcate was made had to satisfy himself by strict proof on these points before acting under clause (e). He could not act *suo motu* but only on an application by the proprietor or permanent tenure-holder to declare and demarcate.

Unless the Collector both declared the land to be *sir* and demarcated it, the land did not become *sir* under the clause. After the Collector has made a declaration, it was the duty of the proprietor or permanent tenure-holder to see that the land is demarcated.

The Collector could declare and demarcate only as provided by the clause. He had to ascertain the actual area of *sir* possessed by the applicant at the date of the application and then the quantity necessary to make the percentage indicated in the clause; and his declaration could not exceed the difference between the two. Only the cultivated area was to be taken into account in ascertaining the quantity necessary to make up the percentage. The scale produced a slight inequality.

(xvi) The expression "cultivated area in the mahal owned by the proprietor" was somewhat ambiguous. If the word *owned* qualified the word *mahal*, mahals owned by two or more persons would be outside the clause. If it referred to "cultivated area" in the mahal, as it obviously seemed to do, co-sharers could come in and, in that case, the Collector has to ascertain the total cultivated area of the mahal and the share of the applicant in such area, in order to see what *percentage* he was to take for the purpose of the second column.

(xvii) **First proviso to clause (e)** is very important as fixing the maximum area which could be acquired as *sir* under the clause. The first thing is to ascertain from the scale given in the proviso the total area which a proprietor can hold as *sir*. The next is to add up the area as already held as *sir* under clauses (a) to (d). If this total exceeds the possible total as calculated from the scale, clause (e) will be inapplicable; if it be less, the difference between the two totals is the maximum acquirable under clause (e).

(xviii). **The Second Proviso to clause (e).**—If statutory lands are taken in exchange for *sir* the landlord loses his *sir* rights in the *sir*, but gets them in the statutory land received in exchange.<sup>1</sup>

So where *sir* is exchanged for occupancy land, *sir* rights accrue over the land received in exchange.<sup>2</sup>

<sup>1</sup> *Budh Singh v. Ram Bharosay*, XII U. D. 176.

<sup>2</sup> *Gurdial Singh v. Madan Singh*, XVII U. D. 35.

4. The last day of June, 1938 is made the crucial date for ascertaining whether or not a *sir*-holder under clauses (d) or (e) of the Agra Tenancy Act or the corresponding provision of the Oudh Act is one assessed at less than Rs. 25 in a local rate. The first proviso will apply and no part of such *sir* shall cease to be *sir* on the Act coming into operation if on that date his assessment was below Rs. 25. But if a local rate exceeding that sum had been reduced at a settlement or revision of settlement to below that amount he will be in the same category as if his assessment exceeded Rs. 25 on 30th June, 1938, and such *sir* shall cease to be *sir*. So if since that date he had obtained his *sir* rights by succession or survivorship, such *sir* of such person will not escape the operation of the Act.

In Oudh (i) Clauses (a) and (b) of the definition are the same as clauses (a) and (b) of sub-section (1) of section 67 of the Original Act, and clauses (a) and (b) of sub-section (13) of section 4 of the Land Revenue Act.

(ii) Under clause (a) it had to be established (i) that the land had been dealt with as *sir* in the distribution of profits or charges, (ii) continuously, (iii) for the seven years immediately preceding "the passing of the Act" of 1886. The expression "dealt with as *sir*" is an ambiguous expression. "Dealt with" obviously refers to dealings between co-sharers; but what has to be made out to show that the conduct of the co-sharers dealt with a land as *sir*?

The co-sharers must have dealt with the land as *sir* continuously for a period of seven years immediately preceding the passing of the Act of 1886. A break in such treatment in any year of that period was fatal to the land being classed as *sir*. This period of seven years must extend to the date on which the Act of 1886 was passed. It follows that for however long the co-sharers might have treated a land as *sir*, if they ceased to do so even for a season or so before the passing of the Act, the land was not *sir*. This is the effect of the word immediately.

Actual cultivation by the proprietor is not necessary under the clause as it is under clauses (b), (c) and (d) and so a grove field may be *sir* as a grove does not destroy the character of *sir*.<sup>1</sup>

The word *immediately* is explained more fully in the notes to clause (b).

(iii) Under clause (b) there must have been (i) cultivation, (ii) continuous, (iii) for seven years, (iv) immediately preceding the passing of the Act of 1886, and (v) and the cultivation must have been by the proprietor as such or by his servants or by hired labour. Item (v) precludes the idea of cultivation by tenants; item (ii) provides against a break of such cultivation as is needed by clause (b).

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<sup>1</sup> *Angney v. Abid Husain*, 1931 A. I. R. Oudh 62—12 U. D. (H. C.) 42—12 L. R. Rev. 6.

Clause (b) is in effect the same as clause (b) of sub-section (12) of section 4, Land Revenue Act, and clause (b) of section 4 of the Agra Act which defined *sir* for the Province of Agra, and there too the expression "immediately preceding" was used. These words were susceptible of two meanings, *viz*, that the seven years of cultivation might have expired on any day before the Act was passed, or that the seven years must be reckoned back from such day. Under the first interpretation seven years' cultivation at any period prior to the passing of the Act would make the land *sir*, although since the completion of the seven years and before the passing of the Act it had been in the cultivation of tenants. Under the second interpretation, cultivation for even 50 years would be ineffectual if on the day before the Act was passed the land was cultivated by tenants. The first interpretation was adopted in *Sukhnandan Singh v. Bhagwan Dutt*,<sup>1</sup> *Baiju Ahir v. Lachminia*,<sup>2</sup> and is supported by rule 63 of circular I—VII. The second interpretation was adopted in *Ram Bharosay v. Sampat Rai*,<sup>3</sup> *Sheo Ghulam v. Purmeshrie Lal*.<sup>4</sup> In applying these rulings one must bear in mind that *sir* was defined for the first time in 1886, whereas in the sister province, the Act XII of 1881 made *sir* acquirable simply by 12 years' cultivation, this period having no *Terminus ad quem*.

The cultivation must have been by the proprietor as such or by his servants or by hired labour. Hence, cultivation by some one put in possession by a proprietor did not make the land *sir*.

(iv) Clauses (c) and (d) introduced two new ways of creating *sir*. Under clause (c) the proprietor or underproprietor must have been cultivating the land, when the Act of 1921 came into force, and (ii) the land must have been recorded as his *khudkasht*, (iii) in the year immediately preceding the agricultural year, etc., *i.e.*, in the agricultural year ending the 30th of June, 1921. Under clause (d), ten years' cultivation after the coming into force of the Act of 1921 is enough. These clauses are except for the dates the same as clauses (d) and (e) of section 4 of the Agra Act dealt with in note 3 *supra*.

5 *The first proviso to clause (a).*—This aims at restricting the *sir*-holding rights of big *sir*-holders who became so by virtue of the addition of clauses (d) and (e) to section 4 of the Agra Act of 1926 or of clauses (c) and (d) to section 3 of the Oudh Act by the amending Act of 1921. The restriction is confined to such *sir*-holders only when they are assessed to a local rate of more than Rs. 25. On the date of the coming into operation of the Act, the land added to the previous *sir* area by virtue of the additions will cease to be *sir*. Of course those who have already parted with their proprietary interests and have become exproprietary tenants will not be affected; but if they regain their proprietary

<sup>1</sup> II U. E. 180.

<sup>2</sup> II U. D. 385.

<sup>3</sup> II U. D. 38.

<sup>4</sup> B. R. 1 of 1920—III U. D. 718—6 R and Cr. L. J. 99—2 U. P. L. R (B. R.)



rights after the coming into operation of the Act, this added land or such portion of it as had become subject to their expropriary holding will not revert to them as *sir*.

Land received before the first of July, 1938, otherwise than in accordance with the provisions of section 122, Land Revenue Act, will not cease to be *sir* under the first proviso.

Land received in exchange for land which was *sir* under clauses (a) to (c) of the Agra Act, or clauses (a) and (b) of the Oudh Act will not lose its *sir* character on the passing of the Act, provided the land was received in exchange before the commencement of the Act and after the 30th of June, 1938 in accordance with the provisions of section 122 Land Revenue Act, that is, by agreement between the parties during the course of partition proceedings and before the confirmation of the partition, which agreement was given effect to by the Collector.

6. The second or further proviso is very important as providing some safeguard against defeating the provisions of the first proviso. If the *sir*-holder under the enactments mentioned was assessed to a local rate of more than Rs. 25 on June 30, 1938, the fact that at the date of the commencement of the Act his assessment was less than the sum will be immaterial—and he would be classed as assessed to more than Rs. 25—except in the cases mentioned in the proviso. Assessment may have been reduced between the two dates by sale or other transfer, such as gift, khula, dowry, possessory mortgage, lease, etc., etc., of a portion sufficient to bring down the assessment below Rs. 25, or by partition between co-sharers. Such transactions will be ruled out as devices to evade the proviso.

The cases excepted from this rule against evasion are: (1) decrease in the local rate at a settlement or revision of settlement, *e.g.*, by reduction of the amount payable as land revenue to below Rs. 250, and (2) obtaining his *sir* rights by succession or survivorship since the 30th of June, 1938. The expression *his sir rights* seems to limit this part to a case where his *sir rights*, *i.e.*, the entire *sir rights* of the *sir* holder, shall be acquired after that date, by succession or survivorship. Two positions are conceivable. A person hit by the proviso may have had no *sir* at all under section 4 (d) or (e) Agra Act, or section 3 (17) (c) or (d) of the Oudh Act, before the 30th of June, 1938, but has acquired them since then and before the commencement of the Act, or he may have been such a *sir* holder on that date but assessed to less than Rs. 25, and since that date has acquired additional *sir* land by succession or survivorship, which brought up his assessment to more than Rs. 25 at the date when the Act came into operation. Reading the proviso as a whole, the last mentioned position seems to be contemplated, and such *sir*-holder will not be a person affected by the first proviso.

It may be mentioned that the expression *sir rights* if taken as defined in section 8, would probably narrow down the scope of the proviso.

7. The third *proviso* shows the application of the first proviso to joint *sir*-holders. If A, B, C and D are joint *sir*-holders of an area and C and D are not severally assessed to a local rate of more than Rs. 25, while

*A* and *B* are, the first proviso would not apply to them and their shares in the *sir* area will naturally continue to be *sir* after the passing of the Act; but the effect of this proviso is to preserve the *sir* character of the entire *sir* area of *A*, *B*, *C* and *D*, until the *sir* shares of *C* and *D* are demarcated under the provisions of the Act.

Where a co sharer mortgaged his share of *sir* and waived exproprietary rights, the actual tenants thereof become tenants-in-chief (now hereditary) if the mortgaged share was demarcated, otherwise they remained mere *sir* tenants of all the co-sharers.<sup>1</sup>

Clause (b). The second class of land which is *sir* under the definition is land which was *khudkasht* and which is demarcated as *sir* under the provisions of this Act. Both conditions are essential, *i. e.*, the land being *khudkasht*, and its demarcation under this Act as *sir*, sub-section (9) of section 3 defines *khudkasht*, and sections 15 and 18 provide for demarcation of land as *sir*. The point to bear in mind is that *khudkasht* land will not become *sir* unless and until it has been demarcated as such after the passing of the Act.

Clause (b) is very beneficial to zamindars, as now they acquire *sir*-holding rights, including right to sublet, over land over which they could have only *khudkasht* land holding rights which became lost with subletting. The smaller zamindars who live in their villages will benefit specially.

The explanation must be kept in mind when calculating the local rate on the land.

7. For the purposes of the provisos to section 6, each member of a joint Hindu family shall be deemed to be assessed to so much of the local rate assessed on the property of such family as appertains to his share in such property ;

Application to joint Hindu families.

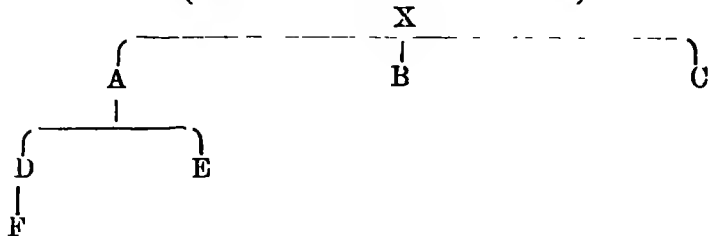
Provided that a member of such family, any of whose male lineal ascendants in the male line of ascent is alive and joint with such member, shall not for such purposes be deemed to be a *sir*-holder, of any portion of the *sir* of such family and the share of such member in such property shall be deemed to be *included in* the share of his oldest surviving ascendant in the male line of ascent and the local rate assessed on such share shall be deemed to be assessed on the share of such oldest surviving ascendant.

[The words *included in* were inserted by section 2 of the United Provinces Tonauy (Amendment) Act, No. 1 of 1940.]

<sup>1</sup> *Lachman v. Dharam Deo Narain Singh*, XX U. D. 180—1938 R. D. 822—1939 A. L. J. (B. R.) 36, relying on *Hanuman Ras v. Lallu Rai*, XIV U. D. 299; *Udit Rai v. Rakhlu Rai*, 17 R. D. 1113; *Amrita v. Ram Nath*, 1938 R. D. 448; *Raghu Nath v. Abid Ali*, 1938 R. D. 472; *Rikhi Singh v. Bajrangi Singh*, XVI U. D. 409, *Raghu Nandan v. Ram Bachan Singh*, XVIII U. D. 243.

This provides for the calculation of local rates in respect of the branches of a joint Hindu family holding land as *sir*. The proviso should be studied with care.

(MALE LINEAL ANCESTOR)



A, B, C, D, E and F are all males.

If X is alive and joint with his descendants he is the person deemed to be assessed to the local rate and not any of his descendants. If he be dead, A, B and C are deemed to be assessed in equal shares, and not D, E or F. Suppose D has separated from the family, and from his father A. Presumably A, D and E shared equally in the third of A and shall be deemed to be assessed accordingly, unless A's wife was alive at the date of D's separation, in which event D's share was a fourth only in A's third share.

8. "*Sir* right" means the rights conferred on *sir*-holders by this Act and by the United Provinces Land Revenue Act, 1901, and includes the right to exclusive possession of the *sir* against co-sharers of the *sir*-holder in the proprietary right, subject to a liability to account for profits.

This reproduces with slight variation the definition of *sir* rights in section 5 of the Agra Act, 1926.

The special rights conferred by the Land Revenue Act are some concession at a settlement as to the rent at which *sir* is to be assessed for purposes of assessment of revenue, to a kind of exproprietary right, when the *sir*-holder zamindar does not take up a settlement offered, exclusive possession of his *sir* by a co-sharer on a partition except in cases of exchange or compactness of the partition, to have exproprietary rights in *sir* included in the mahal of another co-sharer.

The rights conferred by the Act of 1926 were the rights conferred by sections 4, 5, 6, 7, 14, 15, 16, non-acrual of occupancy rights therein implied and expressed by section 17, or of a statutory tenancy therein implied by section 19, restriction on subletting, section 27, right to eject at will, restriction on improvement, section 112, right to make an improvement, section 115, right to realise rent, right to distrain for rent.

The definition includes in *sir* right the exclusive right to possession of the *sir* against co-sharers of the *sir*-holder in the proprietary right, subject to a liability to account for profits.

See *Ram Prasad Singh v. Janki Prasad Singh*<sup>1</sup> as to the meaning of *sir* right before the Act.

The expression *co-sharers of the sir-holder in the proprietary right* is ambiguous. It means probably co-sharers in the zamindari of the mahal in which the *sir* is situate; but it may also mean co-sharers in the proprietary right in the *sir* only. For instance, if several co-sharers owning a mahal or a share in a mahal sell it, reserving the *sir* to themselves, they are all co-sharers of each other in the proprietary right in the *sir* although they have ceased to be co-sharers in the zamindari of the mahal.

How exclusive possession is to be brought about is not clear. In an ordinary undivided mahal, the *sir* belongs to the entire proprietary body according to their shares. Not infrequently, by some express or tacit arrangement, co-sharers cultivate *sir* individually, some more, some less, than the area which would be theirs according to their shares. All the *sir* however remains the property of the entire body of proprietors until partition, when *sir* in the exclusive possession of a co-sharer is to be allotted to him in the first instance, unless for reasons given in the Land Revenue Act this is departed from.

A private partition does not destroy a co-sharer's right of joint ownership and he is entitled to sue a trespasser with respect to plots allotted to another co-sharer<sup>2</sup> but he cannot get joint possession<sup>3</sup>

A recorded *sirdar* is entitled to eject as trespasser a purchaser from one of the joint *sirdars*.<sup>4</sup>

Does the right to exclusive possession extend to the area of *sir* which according to his share ought to be possessed by a co-sharer or does it extend to any area he actually gets possession of?

9. (1) On the death of a *sir*-holder *sir* rights shall not devolve except in accordance with the personal law to which the deceased was subject.

Succession to and transfer of *sir* right.

(2) *Sir* right is not transferable except—

(a) by gift to a person to whom the proprietary right in the *sir* is gifted, or

(b) by exchange:

Provided that no *sir*-holder shall exchange *sir* for *sir* in a mahal in which he is not a co-sharer unless the proprietary rights in the *sir* are exchanged.

**Succession to and transfer of *sir* rights**—Sub-section (1) corresponds to section 5, and sub-section (2), to section 6 of the Agra Act, 1926.

Succession to *sir* right is, as before the Act, according to the personal law.<sup>5</sup> *Khudkasht* land, not demarcated as required by section 6 (b), is

<sup>1</sup> 10 R. and Cr. L. J. 326=5 L. R. Rev. 278.

<sup>2</sup> *Haldar Upadhyaya v. Ram Sumar Upadhyaya*, 1939 All 332=1939 A. L. J. 271=1939 R. D. 169 (agreeing with the decision in *Bir Singh v. Bhagwant Prasad*, 1935 R. D. 450.)

<sup>3</sup> *Ibid*

<sup>4</sup> *Oudh Nath v. Mewa*, 1939 R. D. 380.

<sup>5</sup> *Debi v. Abdul Khaliq* V U. D. 446=4 L. R. Rev. 210=9 R. and Cr. L. J. 230=1923 R. C. 109 (*chela* entitled to inherit *sir* of *guru*.)

not *sir*, hence a daughter cannot inherit it, unless she actually cultivates it.<sup>1</sup> A Hindu daughter who had succeeded to her father's zamindari sold it to *B*. Almost 12 years after the daughter's death, *A* as reversioner sued *B* for possession of 2/3rds and under the decree passed *A* was held entitled to two-thirds and *B* to one-third. *A* now sued *B* for two-thirds of some land, which *B* had converted into *khudkasht* and over which he had acquired *sir* rights, since no *khudkasht* or *sir* existed on the death of the last male holder. *A* cannot be said to have inherited it and his suit must fail.<sup>2</sup> For purposes of devolution, the land must have been *sir* of the deceased.

Proprietary rights in this section include the rights of an under-proprietor and of a permanent tenure-holder.

Before 1873, *sir* rights could be transferred.<sup>3</sup>

The negative form "shall not devolve except" etc. should be noted. It shows that when succession is in accordance with a statutory law, which is not the ordinary personal law of the deceased—*e.g.*, under the Oudh Estates Act—the proprietary rights in the *sir* will not devolve. Hence we have section 12.

*Sir* rights will devolve according to the personal law of the deceased. *i.e.*, to all persons who happen to be the nearest heirs of the deceased at the time of his death or when the succession opens out. Where a rule of customary law, *e.g.*, of primogeniture or of exclusion of females, or of statutory law, *e.g.*, the Oudh Estates Act, prescribes the succession to proprietary rights, that rule is not a part of the personal law. The result will be that the proprietary rights in *sir* will go to the heir preferred or not excluded, and the cultivating rights in the *sir* will go to the heirs according to the personal law, and since these latter have not inherited the proprietary right, they will all become hereditary tenants of the land according to their shares under the personal law. The heir preferred by custom or statute will ordinarily be one of the heirs under the personal law, and he would also be one of the co-hereditary tenants of the land the proprietary right in which has vested in him, but the words "no such right devolves" will exclude him.

The words "on the death of a *sir*-holder" may raise a difficulty. Suppose a female is the heir to the deceased at the time of his death. If a Hindu, she will take the estate for life, and on *her* death the males estate will, in the absence of other female heirs, pass to his nearest male reversioner, will it be open to argue that these males inherited on the death of the male *sir*-holder? It is submitted, not. It is of course arguable that the deceased female was the *sir*-holder, and if this is the correct view, the *sir* rights will pass to her heirs according to the personal law, and not to the heirs of the predeceased male *sir*-holder, which is an indefensible position so far as Hindu law is concerned, as her heirs would be taking a larger estate than she had.

<sup>1</sup> *Muhammad Zamrud Hasan Khan v. Muhammad Mashul Zaman Khan*, XIV U. D. 172 = 14 L. R. Rev. 103.

<sup>2</sup> *Kali Charan Ram Saithwar v. Banku Chand*, 1937 A. L. J. 147 = 1937 A. I. R. All. 388 = XVIII U. D. (H. C.) 1 = 1937 R. D. 50.

<sup>3</sup> *Rikhai v. Umrao*, V U. D. 501 = 1923 R. C. 70.

The result of reading the subsection literally will be that in the case of Hindus, the proprietary rights in the *sir* will lapse on the death of the female, and hereditary rights would arise in favour of those who inherit the *sir* land.

*Sub-section (2).* Corresponds to second proviso to section 4(e) of the Agra Act, 1926.

**Gifts.**—*Sir* rights may be transferred by gift but only to the person to whom the proprietary right in the *sir* is donated. A gift to any other person will be ineffectual to pass the *sir* rights to the donee.

**On exchange.**—Now, an exchange of *sir* need not be between co-sharers in the mahal to pass the *sir* rights in the land given in exchange, provided the two parties to it exchanged also their proprietary rights in the *sir*.

The proviso restricts free exchange. A co-sharer in mahal M cannot exchange his *sir* therein for *sir* in mahal N in which he is not a co-sharer, unless the proprietary rights in the *sir* are also exchanged. The prohibition is absolute, and any exchange in contravention of it will not be given effect to. So co-sharers in one mahal may exchange their *sir*-lands and proprietary rights with each other<sup>1</sup>. So common co-sharers in both mahals M and N may exchange *sir* of one mahal with the *sir* in the other.

A difficulty rears its head when section 9(2) is placed alongside section 11(c). The latter is limited to a case where groveland which is also *sir*-land is transferred otherwise than as provided in section 9(2), in which event the *sir* character of the land is gone, although its character as groveland remains. Does it follow that other kinds of *sir*-land transferred otherwise than in accordance with section 9(2) do not cease to be *sir*? Section 11(c) indicates this inference or difference between the two kinds of *sir*-land.

10. A landholder may agree with his tenant to exchange *sir* which is not let for land which such tenant holds from such landholder and which he has not sublet, and on such exchange each party shall have the same rights in the land which he receives in exchange as he had in the land which he gives in exchange.

Section 50 provides for exchange of lands between a proprietor and a tenant. If the land given by a proprietor in the exchange is *sir*, he acquires *sir* rights in the land received in the exchange. It was held that where land burdened with statutory or other class of tenancy right was received in exchange for *sir*, the proprietor will lose *sir* rights over the land he has parted with in the process, but will get them in the land received<sup>2</sup>.

Now, there is a restriction that the *sir* which is given in exchange must be unlot, and also that the tenant's land received in exchange must not be sub-let.

<sup>1</sup> See *Shankar Singh v. Ram Pearey*, XV U. D. 377=15 L. R. Rev. 377.

<sup>2</sup> *Budh Singh v. Ram Bharsey*, XII U. D. 176; *Gurdial Singh v. Madho Singh*, XVII U. D. 35.

The conditions for the application of the section should be noted, viz., the *sir* given in exchange must not be let, the land which the tenant gives in exchange must be land which he holds from such landholder and he must not have sublet it. Land which the tenant holds from several persons jointly or severally cannot be given in exchange. Land which is the subject of a joint or common tenancy cannot be given in exchange by one of the co-tenants. The section ensures that the lands exchanged must not be burdened with tenancy rights or joint proprietary or tenancy rights.

Extinction of *sir* right.

11. Land shall cease to be *sir*—

(a) when the *sir*-holder becomes an ex-proprietary tenant of such land ; or

(b) when under the provisions of this Act, hereditary rights accrue in such land ; or

(c) when, being grove-land, it is transferred otherwise than in accordance with the provisions of sub-section (2) of section 9 :

Provided that if an ex-proprietary tenant regains his proprietary right in the land held by him as ex-proprietary tenant, such land shall again become his *sir* :

Provided further that if, on redemption of a mortgage, the mortgagor regains possession of land which, under the provisions of the Agra Tenancy Act, 1926, ceased to be *sir* and to which the provisions of the second paragraph of sub-section (5) of section 15 of that Act applied, such land shall again become his *sir*.

1. The section corresponds to section 7 of the Agra Act, 1926 and part of section 3 17) Oudh Act, first proviso to the said section 7, and the 4th proviso to section 3 17) Oudh Act.

2. Sub-section (a).—When the *sir*-holder becomes an exproprietary tenant of such land, under section 26 presumably this is not exactly the same as “when the land becomes the subject of an exproprietary tenancy” of the repealed Acts.

Where a co-sharer transfers the whole or a part of his undivided share, or the sole owner of a mahal or divided share in a mahal transfers a part of his interest he becomes the exproprietary tenant of an area of *sir* appertaining to the zamindari share sold, provided it is demarcated under section 36, Land Revenue Act. If not so demarcated he will not become an exproprietary tenant. That was said to be the law under the earlier Acts, and will now be under section 26(3).

<sup>1</sup> *Ram Jas v. Sheo Shankar*, B. R. 2 of 1910 ; *Ram Prasad Singh v. Janki Prasad*, 1925 A. I. R. All. 93—VI U. D. (H. C.) 264—5 L. R. Rev. 278—1924 R. C. 405—10 R. and Cr. L. J. 326—89 I. C. 899—9 R. D. 443, *Contra* before 1873 ; *Dourka Prasad v. Kandhaya Lal*, I U. D. 62 ; *Binda Prasad v. Sheo Dularey*, XII U. D. 240—12 L. R. Rev. 23—15 R. D. 167.

A *sir*-holder becomes an exproprietary tenant of the *sir* at the date of the transfer, though he has three years to file a suit for recovery of the holding. That he does not file such a suit within limitation, will not revert the character of the land to *sir*. If the transferee began to cultivate the transferor's *sir*, he did so as of *khudkasht* and not as of *sir* land, as *sir* rights are not transferable,<sup>1</sup> or as *sir*-holder.<sup>1</sup>

A transfer must be valid transfer. If a gift of *sir* and *khudkasht* is declared by a competent court to be invalid, the *sir* character remained throughout, in spite of its temporary occupation by the donee.<sup>2</sup>

A sold in 1906 his proprietary rights, including an area of *sir* and *khudkasht*, in his special control, to B. The *sir* and *khudkasht* plots were sold by specific numbers. The result was that A did not acquire exproprietary rights, and B took the plots as *khalsa* and not as *sir* and *khudkasht*. B sold in 1911 his interest to C, who on the date of sale gave a lease of the land which had been the *sir* and *khudkasht* of A to B for ten years at a fixed rate. C sold his rights to D, who sued B for a declaration that he was a statutory tenant. B claimed that the land was his *sir*, and the other co-sharers of A claimed that by the sale by A of a fractional share and absence of demarcation of the *sir*, the land had become part of their *sir* under the Board's ruling in B. R. 9 of 1918. It was held that B never became an exproprietary tenant when he sold his interest to C, as the *sir* had lost its character, and that the old *sir* of A did not become part of the *sir* of his co-sharers under the Board's decision, and that B was a statutory tenant.<sup>3</sup>

The Board of Revenue held that where a joint *sir*-holder mortgaged his share, but did not claim exproprietary rights, he on redemption was entitled to joint possession of the *sir*,<sup>4</sup> and similarly, if on a partition the whole of the *sir* of a village was assigned to A, one of the co-sharers and the other co-sharers did not get their exproprietary lands separated or rent fixed, the whole became the *sir* of A.<sup>5</sup>

3. *Sub-section (b).*—When hereditary rights accrue in respect of *sir* under the Act, the *sir* character is lost. Section 29 relates to the creation of hereditary rights, and sub-section (a) thereof bans the accrual of such rights over land held as a tenant of *sir*.

4. *Sub-section (c).*—**Groveland.**—*Sir* land on which a grove is planted and which is groveland, ceases to be *sir* on its being transferred otherwise than by gift to a person whom the proprietary right in the *sir* is gifted, or by exchange between co-sharers in the mahal. Section 9 (2) is general; section 11 (c) is confined to cases of groveland.

<sup>1</sup> *Hukma v. Har Prasad*, 11 L. R. Rev. 23=14 R. D. 504.

<sup>2</sup> *Sant Buz Pal v. Raghu Nath Kumar*, XIV U. D. 74=14 L. R. Rev. 88=14 R. D. 254.

<sup>3</sup> *Binda Prasad v. Sheo Dularey*, 12 L. R. Rev. 23=XII U. D. 240.

<sup>4</sup> *Ram Kishore v. Jai Mangal*, 7 L. R. Rev. 261=(1926) R. C. 329.

<sup>5</sup> *Bishwa Nath v. Ghulam Murtaza*, II U. D. 108=3 Rev. and Cr. L. J. 7.



5. **The provisos—reversion to *sir* character.**—The first proviso revives the *sir* character after it has been lost on a transfer. If there has been no loss of *sir* character, as in the class of cases mentioned above, there can be no question of revival or regaining. To cause such revival, the exproprietary tenant must regain his proprietary rights in the land held by him as exproprietary tenant

When *sir* was usufructually mortgaged before 1902, so that no exproprietary rights arose, and the mortgage was redeemed after 1901, the *sir* rights revived on the date of the redemption.<sup>1</sup>

A mortgagor must remain in occupation after a usufructuary mortgage or get into possession within limitation in order to be entitled to exproprietary right and to reversion of the land to its character of *sir* after redemption. Where on a mortgage of *sir*, the mortgagor gave up his exproprietary rights, and the mortgagee in possession let out the land to tenants who were statutory tenants under the law, redemption did not revert the *sir* rights to the prejudice of the tenants who were no parties to the redemption proceedings.<sup>2</sup> The question in such cases was whether he did continue in or regain possession after the mortgage. The court of first appeal may find that he did so continue in possession from the fact that the entry of *sir* remained unaltered after the mortgage and after the redemption, and the cultivator of it took leases of it under the impression that it was *sir*.<sup>3</sup>

In 1902, *J. R.* usufructually mortgaged his zamindari with *sir*, but though he did not claim exproprietary rights he remained in occupation of it by collection of rents from *shikmis*. He redeemed the mortgage two or three years after and in 1929 sued to eject the *shikmis* who pleaded that the land had ceased to be *sir* after the mortgage. It was held that on redemption the character of *sir* revived.<sup>4</sup>

The *sir* character reverts only in respect of land which an exproprietary tenant held as such, and not necessarily in respect of land which became the subject of an exproprietary tenancy. That is, the land must have been the *sir* of the expropriator at the date of the transfer made by him, and he must have held it as his exproprietary holding ever since such transfer up to the time of his regaining his proprietary rights. If at the time of or after the transfer of proprietary rights, the transferor allowed the transferee to get into possession of the land which was his *sir* otherwise than as sub-tenant or licensee, and to retain it beyond the period of limitation his exproprietary rights are extinguished, and he can no longer be said to have it as an exproprietary tenant. Hence the character of *sir* will not revert to this land. So if the expropriator had surrendered or relinquished his holding or had been ejected therefrom, he could not on again becoming the proprietor claim *sir* rights in respect of it.

<sup>1</sup> *Dharam Dat v. Lachman*, 12 L. R. Rev. 145=15 R. D. 416.

<sup>2</sup> *Jamadar v. Baboo*, 14 L. R. Rev. 743=XIV U. D. 892.

<sup>3</sup> *Sullhu v. Ram Nath*, 12 L. R. Rev. 401.

<sup>4</sup> *Sukha Nona v. Ram Nath*, XIII U. D. 13.

A Hindu widow sold her husband's zamindari including *sir*. Her application claiming exproprietary rights was dismissed as time-barred. On her death the sale was set aside at the suit of her husband's reversioners as having been made without any legal necessity. *Sir* rights revived in favour of the reversioners.<sup>1</sup>

If her daughter sued to cancel the sale and the suit was compromised on the terms that the vendee was to convey half the *sir* to her, she did not take the land as *sir*.<sup>2</sup> The reason assigned was that the daughter really got the property as on a retransfer from the purchaser and not by inheritance. But is not this regaining?

Where exproprietary rights passed to a brother of the person who had mortgaged his *sir*, and the equity of redemption to his daughter's son and the mortgagee made a gift of his right to this daughter's son, the latter could not claim revival of *sir* rights, because he was not the exproprietary tenant.<sup>3</sup>

6. The word *held* means held at the time of regaining the proprietary rights, or within the period of limitation when surrender, relinquishment, or ejectment had not taken place.

7. The character of *sir* reverted only when the exproprietary tenant regained his former position. This did not include a transferee of his tenancy rights from him, when such a transfer was valid, as the privilege seemed to be personal to him, but would include the heirs to his holding under the Act. Other heirs could not, as shown above, claim the right of reversion.

If the vendee of proprietary rights in *sir* inherited the exproprietary rights of the vendor, the land became his *sir*.<sup>4</sup> The sale was to the grandsons of the owner.

8. The regaining of proprietary rights had to be in respect of the land held by him as exproprietary tenant. This may be brought about by redemption or repurchase of the original interest in the village or of the proprietary rights in the holding. The regaining may be by right of pre-emption or inheritance, or any other way, *e. g.*, avoidance of the transfer, mutual agreement or as the result of a suit. It is submitted that a usufructuary mortgage did not produce this result. Conceive a case like the following. A sells his proprietary interest in a village to B and becomes the exproprietary tenant of his *sir*. B subsequently mortgages the village usufructually to A. So long as this mortgage lasts, A holds the village as a proprietor and his former *sir* as an exproprietary tenant, for, on redemption, the latter position alone will remain to him. If, on taking the mortgage, he begins to hold his former *sir* as *sir*, some very curious results may follow.

<sup>1</sup> *Barmah Singh v. Sheo Nath*, 31 I. C. 851—I U. D. 306—II U. D. 120

<sup>2</sup> *Chetan Das v. Har Kuar*, IV U. D. 569.

<sup>3</sup> *Umrai Singh v. Anek Singh*, XIV U. D. 212—14 L. R. Rev. 645.

<sup>4</sup> *Balai v. Abdul Wahid Khan*, 1922 R. C. 582—V U. D. 351—4 L. R. Rev. 87.

Where one of five brothers who are expropriary tenants acquired a share in the village for himself and not for all, only one-fifth of the expropriary holding became *sir* <sup>1</sup>

It is not unusual for a vendor to receive his *sir* in perpetuity and revenue free. This leases him his proprietary rights in the *sir* which retains its character.

12. (1) If on the death of a *sir*-holder the proprietary right in his *sir* does not devolve according to the personal law to which the deceased was subject, every person on whom no such right devolves but on whom such right would have devolved in accordance with that law, shall become a hereditary tenant of so much of such *sir* as corresponds with the share in such right as would have devolved on him according to that law.

Hereditary rights of *sir*-holder's heir on whom proprietary rights do not devolve.

(2) When proprietary right in *sir* devolves on a person on whom it would have devolved under the personal law to which the deceased was subject and hereditary rights accrue in favour of other persons under the provisions of sub-section (1), the assistant collector in charge of the sub-division shall demarcate and divide off the area in which hereditary rights accrue and shall, in accordance with rules made by the Board, determine the rent payable for such area.

*Explanation*—In this section and in section 9 the expression “personal law” in the case of Muslims shall mean the Muslim law of inheritance.

The section refers back to section 9(1). The *sir* right will devolve according to the personal law. If the proprietary rights also devolve according to the same law, this section will not come into operation; but if customary or statutory or other law makes such rights devolve in a different manner and according to rules prescribed by it, the personal law heirs will become hereditary tenants of their shares as determined by the personal law and then the portion of the *sir* on which hereditary rights accrue will have to be demarcated by the Assistant Collector who will also fix the rent thereof.

The explanation seems to be quite superfluous, for a Muslim's personal law is the Muslim law.

13. In sections 8 and 9, and sections 11 and 12 the words “proprietary rights” shall be deemed to include the right of an under-proprietor and of a permanent tenure-holder, and in section 10 the word “tenant” includes an under-proprietor and a permanent lessee.

Application of “proprietary rights” and “tenant” to other sections.

<sup>1</sup> *Mulchand v. Makhan Singh*, II U. D. 373.

The first part of the section corresponds with the explanation to section 5 of the Agra Act, substituting "right" for "interest" and adding "of an underproprietor and". The second part is new. Permanent lessee means such lessee as defined in section 3(15).

**Rights of certain tenants of sir.** 14. Any person who, at the commencement of this Act, is a tenant of land which ceased to be *sir* under the provisions of section 6 shall become a hereditary tenant of his holding.

The section is new. It provides for accrual of hereditary tenancy in land which ceases to be *sir* under the provisions of section 6, while section 16, which is also new, provides for accrual of hereditary tenancy in certain circumstances in land which continues to be *sir*.

**Demarcation of joint sir.** 15. (1) An assistant collector in charge of a sub-division may, of his own motion, and shall, on the application of any joint holder of *sir* to which the provisions of the third proviso to clause (a) of section 6 apply, or of any tenant of such *sir*, demarcate and divide off so much of such *sir* as was, immediately before the commencement of this Act, the *sir* of those joint *sir*-holders to whom the provisions of the first proviso to that clause apply, and shall declare that the portion so demarcated and divided off has ceased to be *sir* from the date of his order and that from that date any tenant of such *sir* is a hereditary tenant.

(2) If in the course of proceedings under the provisions of sub-section (1), the assistant collector declares that a portion only of the holding of a tenant has ceased to be *sir* he shall divide off such portion and determine the rent of such portion and of the remainder.

(3) Before passing orders under this section, the assistant collector may make such inquiry as he considers necessary and shall give to such joint holders as have not joined in the application and the tenants of *sir*, if any, an opportunity to show cause, if they wish to, why the demarcation should be made in any particular way.

1. The tenant may be of the whole of the *sir* of such *sir*-holder or of only a portion of it. The Assistant Collector may act *suo motu* and has to act on the application of the *sir*-holder or of such tenant. It is conceivable that if the *sir* is let in parts to more persons than one, there may be more applications than one by such tenants, and since the officer's duty is to demarcate the *sir* of such "*sir*-holder," the applications will be consolidated and the demarcation made once and for all. Should, after demarcation on the application of one *sir*-tenant, another tenant make an application, the application will ordinarily be shelved on the strength of the first demarcation.

Section (15) provides for demarcation of joint *sir* areas as between co-sharers who are assessed to a local rate of more than Rs 25

and others. An application for demarcation has to be made to an Assistant Collector in charge of the sub-division. It is Serial No. 1 of Group D of the 4th Schedule and must pay a court-fee of 8 annas and may be made at any time.

The persons entitled to apply are : (a) co-sharers who are assessed to a local rate of more than Rs. 25 or (b) a tenant of *sir* sought to be demarcated. Presumably, a tenant will be entitled to apply when his *sir* holding is the *sir* of co-sharers assessed to more than Rs. 25 and of co-sharers who are not so assessed. As demarcation will mean loss of *sir* character, it is not likely that any such co-sharer who is assessed to a local rate of more than Rs. 25 will apply.

2. It is only the Assistant Collector to whom an application under sub-section (1) is made who may and can demarcate and declare. He may act *suo motu* and independently of an application under sub-section (1). On such application being made he will proceed with the work of demarcation and divide off the *sir* of those joint *sir* holders who were immediately before the commencement of the Act assessed to a local rate exceeding Rs. 25. Having so demarcated and divided off, he will declare the *sir* area, so demarcated, to have ceased to be *sir* from the date of his order.

One consequence of such declaration is indicated in the concluding part of the sub-section, *viz.*, that a tenant of the land (at the date of the declaratory order) will become a hereditary tenant from that date.

One may note here that the concluding part of the sub-section makes it clear that the word *possesses* in the definition of *sir*-holder in section 3.21) does not mean physical possession and includes possession through a tenant.

3. Sub-section (2) relates to a case where a joint *sir* area of persons who are each assessed to a local rate of more or less than Rs. 25 is held by a tenant. On the *sir* area being demarcated and divided off as above, it may happen that a part of the tenant's holding falls in the portion so demarcated and divided off, and the rest in the portion of persons who are assessed to less than Rs. 25 in a local rate. The Assistant Collector is enjoined to divide off the two portions of the holding and determine the rent of each such portion.

4. Sub-section (3) enjoins the Assistant Collector to give notice of the demarcation application to joint *sir*-holders who have not joined in the application and to any tenants of the *sir*.

16. (1) Every person who at the commencement of this Act is a tenant of *sir* holding from a *sir*-holder to whom the provisions of the first proviso to clause (a) of section 6 apply shall, at such commencement, become a hereditary tenant of his holding if at such commencement such *sir*-holder possesses fifty acres or more than fifty acres of *sir* which is not let, and which did not cease to be *sir* under any of the previous provisions of this Act.

Hereditary rights in *sir* and demarcation of *sir* which is let.

(2) If at such commencement such *sir*-holder possesses less than fifty acres of such *sir*, such person shall become a hereditary tenant only in accordance with a declaration to that effect made under the provisions of sub-section (3).

(3) In a case to which the provisions of sub-section (2) apply, the assistant collector may, of his own motion, and shall, on the application either of the *sir*-holder or the tenant, demarcate the *sir* of the *sir*-holder and shall declare that any tenant of land situated in the area not so demarcated shall be a hereditary tenant of his holding or of such portion thereof as is situated in such area.

(4) In demarcating *sir* under the provisions of sub-section (3), the assistant collector shall demarcate as *sir* so much of the *sir*-holder's *sir* and of his *khudkash* as amounts to fifty acres, or the area of the *sir*-holder's *sir*, whichever is less :

Provided that only so much of the *sir*-holder's *sir* which is let shall be demarcated as *sir* as is necessary to make the total area demarcated as *sir* equal to fifty acres or the area of the *sir*-holder's *sir*, whichever is less.

(5) If in accordance with the provisions of sub-section (3), the assistant collector orders that a tenant be the hereditary tenant of a part only of his holding, he shall divide off such portion and shall determine the rent of such portion and of the remainder.

(6) Before passing orders under sub-section (3), the assistant collector may make such inquiry as he considers necessary and shall give the *sir*-holder and the tenants of *sir* an opportunity to show cause why the demarcation should be made in a particular way.

(7) For the purposes of this section an acre situated in Bundelkhand or in the trans-Jumna portion of the Allahabad, Etawah, Agra and the Muttra districts and in such other areas as the Provincial Government may specify by notification in the official Gazette shall be deemed to be half an acre.

1. Sub-section (1) will apply only when the *sir*-holder possesses 50 acres or more of *sir* which is not let and which did not cease to be *sir* under any of the provisions of the Act. If he possesses less than that area no hereditary rights will arise in any part except in accordance with a declaration to that effect under sub-section (3), i. e., when the Assistant Collector has demarcated the *sir* of the *sir*-holder, leaving the rest undemarcated, and the whole or a part of a tenant's holding is situated in the latter area. The tenant will become the hereditary tenant thereof. The idea is to limit the area of *sir* to 50 acres or less. These acres may be made up, in the case of a *sir*-holder with less than 50 acres of *sir*, of *sir* and *khudkash* and any part of his *sir* which is let and is necessary to make

up the 50 acres. If the total amount of his *sir* is less than 50 acres, the land demarcated will not exceed such amount. The crucial date for ascertaining the exact extent of a *sir*-holder's *sir* is the date of the commencement of the Act, and not any other either before or after. It will be noted that if such area is 50 acres or more on such date, hereditary tenancy arises *ipso facto* over the excess when the Act comes into force; if it is less, a declaration to the effect indicated by sub-section (3) has to be made before such tenancy arises over any part thereof. It also appears that, in such a case, the land demarcated as the *sir*-holder's may comprise *sir* which is let.

A demarcation spoken of in sub-section (3) may split a *sir*-tenant's holding into two portions, *viz*, one demarcated as part of the *sir*-holder's *sir*, and the other in the undemarcated area over which hereditary tenancy arises. The Assistant Collector has to determine the respective rents of the two; and may make the necessary enquiry in case of objections to the mode of demarcation proposed by or suggested to him.

Sub-section (7) should be noted.

An application under the section for demarcation is item no. 2 of Group D of the fourth Schedule and lies to the Assistant Collector in charge of the sub-division and chargeable with a court-fee stamp of 8 annas.

17. If the *sir*-holder is a person belonging to one of the classes to which the provisions of section 41 apply or if the property of the *sir*-holder is under the superintendence of the Court of Wards, *sir* let to a tenant who was admitted to his tenancy by such person or while such property was under the superintendence of the Court of Wards shall for the purposes of section 16 be deemed not to be let and such tenant shall not be a hereditary tenant of his holding.

The section affords protection to a *sir*-holder of one of the classes mentioned in section 41 or whose property is under the superintendence of the Court of Wards by declaring to be unlet for the purposes of section 16 the area of *sir* let to a tenant or tenants, with the result that no hereditary tenancy will arise in such area.

18. (1) If a *sir*-holder to whom the provisions of section 16 apply, possesses joint *sir* or joint *khulkaht*, the assistant collector, if he considers it necessary to do so, may before demarcating *sir* under the provisions of that section demarcate and divide off so much of such joint *sir* or joint *khulkaht* as appertains to the share of such *sir*-holder, and the provisions of section 16 regarding *sir* or *khulkaht*, as the case may be, shall apply to the area so divided off.

(2) If in the course of proceedings under section 16 the assistant collector finds that the *sir*-holder is a person who might have

applied under the provisions of section 15, he shall stay such proceedings until the *sir* to which the provisions of section 15 apply has been demarcated under the provisions of that section.

This section is new and provides for a case where a *sir*-holder to whom section 16 applies holds joint *sir* or *khudkasht*. The share of such *sir*-holder in the *sir* will be divided off and then the Assistant Collector will act under section 16. Sub section (1) makes this apply to *khudkasht* held jointly, but only when the inclusion of the *khudkasht* becomes necessary under section 16, clause (4).

The net result of all these sections is that the demarcating officer will have to ascertain or find the following, *viz.*—

- (1) whether the *sir*-holder has any *khudkasht* in addition to his *sir* ;
- (2) if he has, the area of such *khudkasht* ;
- (3) the area of his *sir* which has not been let ;
- (4) the area of his *sir* which has been let, (3) and (4) constituting the total area of his *sir* ;
- (5) whether the *sir*-holder holds his *sir* or *khudkasht* singly or jointly with others ;
- (6) if he holds jointly, the exact extent of his interest therein, and the area which corresponds to his share.

If he finds that the *sir*-holder has no *khudkasht*, and the total area of his *sir*, let and unlet, is less than 50 acres, he will of course demarcate the area ; and the tenants will remain *sir*-tenants ; whereas if he finds the total area of his *sir* to be 50 acres or more, he will mark off 50 acres as his *sir*, the tenants, if any, whereof will remain *sir*-tenants, and the rest will cease to be *sir* and the tenants, if any, thereof will become hereditary tenants. If it happens that such demarcation has split up a *sir*-tenant's holding into two parts, one in the *sir* area and the other in the non-*sir* area, he will fix the rents of the two parts, and presumably fix the boundary line between them.

19. If in any suit or proceeding for the ejectment of a *sir*-holder not to eject a tenant in certain circumstances. tenant of *sir* the court is of opinion that the *sir*-holder could apply under the provisions of section 15 or section 16 it shall, before deciding such suit or proceeding, take action under section 15 or section 16, as the case may be, and if it declares or orders that the tenant is a hereditary tenant of the whole or any part of his holding, it shall dismiss such suit or proceeding :

Provided that if the court is not empowered to take action under the provisions of section 15 or section 16, as the case may be, it shall forward the case to the assistant collector in charge of the sub-division who shall decide it in accordance with the provisions of this section.



This is new. Such *sir*-holder is prohibited from applying for ejectment of his *sir*-tenant before the demarcation of his *sir*. This will prevent such *sir*-holders from enlarging their unlet *sir* so as to get over or minimise the operation of section 16.

*Sir*-land of a *sir*-holder paying not more than Rs. 25 as local rate must be demarcated before ejectment proceedings are taken against the tenant of such land.

**20.** Every person, who is a tenant of *sir* at the commencement of this Act and who does not become a hereditary tenant under the provisions of section 14 or section 15 or section 16 or who is admitted thereafter as a tenant of *sir*, shall be entitled to retain possession of his holding for a period of five years from the date of the commencement of this Act or of admission as the case may be.

This is new, and provides for fixity of rent for 5 years of *sir*-tenants amenable to section 15. The five years will run in the case of the tenants existing at the commencement of the Act from such commencement, and of future tenants from the date of admission to the tenancy.

## CHAPTER III

### CLASSES OF TENANTS

**21.** There shall be, for the purposes of this Act, the following classes of tenants, namely :

- (a) permanent tenure-holders,
- (b) fixed-rate tenants,
- (c) tenants holding on special terms in Oudh,
- (d) ex-proprietary tenants,
- (e) occupancy tenants,
- (f) hereditary tenants,
- (g) non-occupancy tenants.

**1. Cassification of tenants.**—The section reproduces section 10 of the Agra Act, with the addition of clause (c) as to tenants holding on special terms in Oudh, and clause (f) as to hereditary tenants. Statutory tenants and heirs of statutory tenants who were found in section 10 disappear.

There was no corresponding section in the Oudh Act.

**2. Shall be.**—The enumeration of classes of tenants is exhaustive. Hence a tenant who does not come under classes (a) to (f) must be a non-occupancy tenant—*e. g.*, a tenant of *sir* who is not or has not become a

hereditary tenant, or a sub-tenant. A thekadar not being a tenant for most purposes is not a non-occupancy tenant.

**22. (1)** When in Agra any permanent and transferable Permanent tenure-interest in land in a district or portion of a holders. district which is permanently settled has been held, otherwise than under a terminable lease, by any person intermediate between the landlord and the occupants, from the time of the permanent settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

(2) Such person shall be called a permanent tenure-holder.

**1. Permanent tenure-holder.**—This reproduces section 11 of the Agra Act, with the necessary addition of the words “in Agra”.

Section 11 of the Agra Act of 1926, reproduced section 7 of the Act of 1901.

In Oudh this class of tenants does not exist.

Permanent tenure-holding can arise only in permanently settled tracts. The position of the holder is intermediary between the mahal proprietors and the actual occupants or cultivators.

**2. Permanent and transferable.**—The interest must be permanent and transferable and therefore heritable. These words show that the original grant must have been in the nature of a grant to A and his heirs, or, perhaps to A and the heirs of his body. A restraint on transfer will take away the character of a permanent tenure-holder.

**3. Otherwise than on a terminable lease.**—The theka or lease, if any, should not have been for a term, or terminable at will, by notice, or on the happening of a contingency.

**4. Held** does not mean personal occupation, but includes an interest held by means of tenants or sub-leases.

**5. Intermediate.**—This means, in the language of section 5, Bengal Tenancy Act, “for the purpose of collecting rents or bringing it under cultivation by establishing tenants” on the land.

**6. From the time of the permanent settlement, at the same rate of rent.**—The conditions are essential. As to presumption *re* the same rate of rent, see section 24. See also note 5 to section 23 at page 125. The tenure must have been in existence when the permanent settlement was made.<sup>1</sup>

That settlement came into operation from 1197 Fasli, *i. e.*, September, 1789.

**7. Distinguished from fixed-rate tenants.**—A difficulty may arise in distinguishing between a permanent tenure-holder and a fixed-rate tenant, but the question is only of academical interest in this province.

<sup>1</sup> *Radhika v. Ram Mohun*, 1 W. R. 357.

8. **Status.**—A permanent tenure-holder is the proprietor of his interest, although as regards the real proprietor he is but a tenant. A person who holds land from or under him is not a sub-tenant but a tenant-in-chief<sup>1</sup> He can transfer his interest in any way he pleases,<sup>2</sup> without any let or hindrance, in the same manner as he can a zamindari share or a house of which he may be the owner. He is not bound by the restrictions on transfers and grant of leases imposed by the Tenancy Act.<sup>3</sup> On his death, his interest devolves as if it were land according to his personal law not according to the rules laid down in section 35.<sup>4</sup> He can make any improvements, including planting of trees, without the consent of his landholder.<sup>5</sup> His rent cannot be enhanced or abated, nor can he be ejected for any cause.<sup>6</sup>

**23. (1)** When in Agra any land in a district or portion of a district which is permanently settled has been held by a tenant from the time of the permanent settlement at the same rate of rent, such tenant shall have a right of occupancy at that rate.

**(2)** Such tenant shall be called a fixed-rate tenant.

1. **History**—This was section 12 of the Act of 1926 and section 8 of the Act of 1901, and section 5 of Act XII of 1881, and, with verbal alterations, the same section of the Act of 1873, and section 3 of Act X of 1859.

2. **Land**—See section 3(10). **Tenant.**—See section 3(23).

3. **Held from the time of the permanent settlement.**—This must be proved, or the presumption in section 24 may be relied upon. A fixed-rate tenancy cannot arise by contract. A lease by a zamindar to a tenant on the terms that he is to hold the land at an uniform rate and to have all the rights of a fixed-rate tenant, does not create a fixed rate tenancy,<sup>7</sup> specially if it confers power in the lessor to resume the land in case of its attachment or auction sale.<sup>8</sup> Under the Act of 1881 there was nothing illegal in a zamindar entering into a contract conferring upon a tenant the status of a fixed-rate tenant and in agreeing for valuable consideration that he would not be ejected (even for non-payment of rent). Such contract was binding on the landlord who could not eject. And in such a case, an order for ejectment passed by an Assistant Collector because of the existence of a decree for arrears of rent was bad and would

<sup>1</sup> Section 3(22).

<sup>2</sup> Section 32.

<sup>3</sup> Section 33.

<sup>4</sup> Section 34.

<sup>5</sup> Section 65.

<sup>6</sup> Section 155.

<sup>7</sup> *Bachchi v Bachhi*, 3 A. L. J. 513—26 A. W. N. 291—28 All. 747.

<sup>8</sup> *Bilochan Das v. Sheonandan Singh*, III U. D. 591.

be revised by High Court<sup>1</sup>. Conduct may give rise to a tenancy having most of the features of such a tenancy.

Where in a suit under section 95 of the Act of 1901, the dispute was whether the defendant was a fixed-rate or an occupancy tenant and the parties compromised admitting that the defendant was a fixed-rate tenant, the compromise is binding, and the landholder cannot subsequently impugn the recognised status.<sup>2</sup> In a suit for enhancement of rent, the zamindar entered into a compromise in which he stated that the nature of the tenant's tenancy would be that of a fixed-rate tenancy and proceeded to describe certain of its incidents. He was held estopped from subsequently pleading that the tenant was not a fixed-rate one.<sup>3</sup> Or more accurately, he cannot be allowed to deny that the lessee or tenant has all the rights which are enjoyed by a fixed-rate tenant, including the right to transfer.<sup>4</sup> Adverse possession against a fixed-rate tenant may extinguish his interest but cannot confer on the trespasser the status of a fixed-rate tenant as against the zamindar.<sup>5</sup>

4. **Held, i. e.**, as a tenant, not necessarily occupied or cultivated.<sup>6</sup> The land may never have been cultivated.

5. **Same rate of rent.**—As service is not rent under the present Act, a person who holds land in lieu of wages cannot be called a fixed-rate tenant.<sup>7</sup> In places where the rule of Bhaoli rent applies, or where rent is paid in kind, a fixed proportion of the produce is deliverable by way of rent. The quantity actually delivered will necessarily vary from year to year according to the yield, but the proportion being fixed, the rent is at "the same rate of rent."<sup>8</sup>

6. **Any land includes sir.** Hence, a holder of such land in a permanently settled district, on establishing the presumption that his rent had not been changed since the permanent settlement, acquired the status of a fixed-rate tenant.<sup>9</sup>

7. **Status**—A fixed-rate tenant is in most respects in the same position as a permanent tenure-holder, but he is not regarded as a proprietor. A person who holds land from or under him is a sub-tenant. His interest is transferable to the fullest extent, and he is not bound by the restrictions imposed on transfers and grants of leases by the Tenancy

<sup>1</sup> *Sital Din Dube v. Sripal Singh*, 1939 A L J. 962

<sup>2</sup> *Keshodas v. Dular Ram*, 22 I C. 124.

<sup>3</sup> *Bhagwan Singh v. Dwarka Rai*, 29 I. C. 677=1 U. D. 198=1 R. and Cr. L. J. 9.

<sup>4</sup> *Raj Bahadur Singh v. Ram Harakh*, XX U. D. 305=1939 R. D. 15 ; *Nimar v. Rang Nath*, 1938 R D. 602.

<sup>5</sup> *Mahesh Narain Singh v. Bisheshar*, 1931 A L J. 432 ; *Jang Bahadur Singh v. Muh. Yahya*, 1 U. D. 207.

<sup>6</sup> *Pearey Mohan v. Bansi* 11 Cal. 757

<sup>7</sup> See *Dwarkan Das v. Deokinanlan*, 2 A. W. N. 69

<sup>8</sup> *Hanuman v. Kaulesar*, 1 All. 301, (F. B.)

<sup>9</sup> *Bharosa v. Kewal*, 2 L. R. 25 ; *Chomur v. Ragoonath*, 1 W. R. 356.

Act. His transferee can rebuild a house.<sup>1</sup> He can grant a lease of any duration. When he dies, his interest devolves on his heirs according to his personal law and not according to section 35.

His holding may be sold in execution of a decree. A rent-decree against the widow of a deceased fixed-rate tenant may pass the holding, but if the decree was not for a debt which would bind the reversion, the auction-purchaser gets a title defeasible by the reversioners ; until they defeat it he has a good title.<sup>2</sup>

His rent may be enhanced only by a registered agreement or on the ground that the area of his holding has been increased by alluvion or by his encroachments, or may be abated only on the ground that the area of his holding has been diminished by diluvion or by the land being taken up for a public purpose or a work of public utility<sup>3</sup> or that the productive powers of the land have been decreased by any cause beyond his control. The rent payable is the rent recorded by the settlement officer. The mere fact that for some reason a part was not realised at the time of settlement and was entered as *adum usul*, will not entitle the tenant to say that the rent should be what was entered as realised.<sup>4</sup> His rent cannot be remitted in case of an emergency arising under section 126.<sup>5</sup> He cannot evade liability for payment of rent by converting his holding to non-agricultural purposes.<sup>6</sup> He can make any improvement, including planting of trees, without the consent of the landholder.<sup>7</sup>

A fixed-rate tenant can be sued for compensation or injunction for an act inconsistent with the purpose of for which the holding was let ; such a suit will lie in the Civil Court and not in the Revenue Court.<sup>8</sup>

8. **Merger.**—Purchase of zamindari rights merges fixed-rate tenancy rights, and a sub-tenant becomes the tenant-in-chief.<sup>9</sup> If on partition, fixed-rate holdings of A, a co-sharer in the zamindari, are allotted to A's or exclusively, the holdings become merged.<sup>10</sup> But if such holding is wrongly though without objection entered as the *sir* of another co-sharer, it will be deemed to be the latter's *sir*, and the co-sharer tenant as cultivator of *sir*.<sup>11</sup>

Where the members of a family own a zamindari, and one of them acquires a fixed-rate holding, the question of merger depends on circumstances. If the family is a joint Hindu family, there may be a presumption that the acquisition of the holding was for the family but there is

<sup>1</sup> *Thakurji Maharaj v. Anant Bhabhai* 20 A. L. J. 922=1922 R. C. 618=V U. D. (H. C.) 153, 165=4 L. R. Rev. 5

<sup>2</sup> *Jhari v. Bijai Singh*, 5 L. R. Rev. 11=1923 R. C. 367=VI U. D. (H. C.) 28.

<sup>3</sup> Sections 118, 115.

<sup>4</sup> *Sri Narain Singh v. Maharaja of Benares*, XIX U. D. 163

<sup>5</sup> Section 151 (3).

<sup>6</sup> *Beni Madho Prasad v. Sita Ram*, B. R. 9 of 1930=XI U. D. (S. D.) 21=11 L. R. Rev. 380, 393.

<sup>7</sup> Section 65.

<sup>8</sup> *Asharfi Singh v. Sri Mata Raj Mata* 1940 R. D. (H. C.) 175 (dissenting from *Kashi Kahar v. Asharfi Singh*, 1938 A. W. R. (H. C.) 522 and relying on *Tulsi Ram v. Gurdial*, 7 A. L. J. 1011)

<sup>9</sup> *Ilva Sahu v. Ashraf Ali*, II U. D. 233 ; *Jokhan v. Ram Anur Pande* 7 Rev. and Cr. L. J. 91=IV U. D. 630.

<sup>10</sup> *Shao Nandan v. Balgobind*, 45 All. 744.

<sup>11</sup> *Lachman Singh v. Hanuman Saran Singh*, V U. D. 472=1924 R. C. 163.

no such presumption in the case of any other family, *e. g.*, in a Muhammadan family,<sup>1</sup> nor if the acquisition is by inheritance, gift or bequest. *Qu.* Whether in view of the language of section 46, a merger can now take place in such a case.

Where owing to mortgagee's defaults a mortgaged fixed-rate holding is sold for arrears of rent, and purchased by the mortgagee, in equity the tenant's right of redemption is not destroyed although in law it has been purchased by the mortgagee.<sup>2</sup>

**24. (1)** In those districts or portions of districts in which a revision of records has taken place since the first day of January, 1875, every entry made in the record. Presumption from entry at revision of record. revision recording a person as a permanent tenure-holder, or a fixed-rate tenant, or otherwise, shall, in the absence of a judicial decision to the contrary in proceedings instituted before the first day of January, 1902, be as between landlord and tenant, conclusive proof that such person was, at the date of such revision, a permanent tenure-holder, or a fixed-rate tenant, or not, as the case may be.

(2) In those districts or portions of districts in which no revision of records has taken place since the first day of January, 1875, if in any suit or proceeding an issue arises whether a person is a permanent tenure-holder or a fixed-rate tenant and it is proved that he has held any land at the same rate of rent for twenty years next before the institution of the suit or proceeding, it shall be presumed, unless the contrary is proved, that he has held such land at the same rate of rent since the permanent settlement :

Provided that if hereafter a revision of records takes place in any such district or portion of a district, the provisions of this sub-section shall cease to operate, and those of sub-section (1) shall become operative therein.

**1. Same rate of rent.**—This reproduces section 13 of the Agra Act.

**2. History.**—Section 9 of the Act of 1901 was new, and did not exactly correspond with section 6 of the Rent Act of 1881. The present section like its predecessor section 13 of the Act of 1926, is a combination of the two. Sub-section (1) is in effect section 9 of the Act of 1901, and sub-section (2) is in effect section 6 of the Act of 1881.

**3.** The section lays down two tests, *viz*, (a) a revision of records (in a permanently settled tract) at any time, whether before or after the passing of this Act, but after the first of January, 1875, in which an entry is made as to the status of a tenant, or (b) where no such revision has taken place, holding the land at the same rate of rent for 20 years.

<sup>1</sup> *Muh. Munir Alam v. Ninuth*, 10 R. and Cr. L. J. 139—5 L. R. Rev. 101.

<sup>2</sup> *Jaikaran Singh v. Sheo Kumar Singh*, 50 All. 36—8 L. R. Rev. 217.

In case (a) the entry is conclusive proof that *A*, recorded as a permanent tenure-holder or as a fixed-rate tenant, holds that status or that if *A* is recorded as being a tenant of some other class, *e. g.*, an occupancy-tenant, he is not a permanent tenure-holder or a fixed-rate tenant, subject, however, to this that a judicial decision to the contrary in proceedings instituted before the first of January, 1902, destroys the conclusive value of the entry as proof of status. In case (b) uniformity of rate of rent for 20 years raises only a rebuttable presumption in favour of the view that the land has been held at the same rate of rent since the permanent settlement and is therefore either a permanent holder's tenure or a fixed-rate holding. The rebutting evidence may be of any kind.

4. **Conclusive proof.**—*i. e.*, no evidence to the contrary is admissible, except a judicial decision to the contrary in a proceeding started before 1st January, 1902. The entry is conclusive evidence of the nature of the holding and of the fact that as between him and the zamindar the person recorded as fixed-rate tenant is such tenant.<sup>1</sup> The entry is conclusive as to the nature of the tenancy.<sup>2</sup> An entry that *A* was a fixed-rate tenant is conclusive and *A* cannot prove that he was a *muafi*-holder.<sup>3</sup>

The presumption arises from an "entry at the revision of record" made since the first day of January, 1875, recording a person as a permanent tenure-holder or a fixed-rate tenant, and the entry is conclusive. Moreover, an entry recording that a person is not such a holder or tenant is also conclusive.

5. **As between landlord and tenant**, and not as between one of them and third persons. For instance, in a revision of records made in 1882, *A* is entered as the fixed-rate tenant of a plot of land. The zamindar is bound by this; and so is *A*, who cannot give evidence that he was not a tenant but the proprietor of the plot; but sub-section (1) does not prevent *B* from proving that he as member of the family with *A*, had in law equal rights with him in the holding, *i. e.* that *A* is not the exclusive or sole fixed-rate tenant<sup>4</sup>; nor does it prevent *A* from showing that the holding belonged prior to the last revision of records to *M* and *N*, members of a joint Hindu family, that *N* predeceased *M* who thus became the sole tenant thereof under the Hindu law, and that on the death of *M* the holding came to *B*'s mother, the daughter of *M*, and that *A*, the widow of *N*, had no title to the holding, and therefore it belonged

<sup>1</sup> *Ram Saran v. Dhuman Singh*, II U. D. 447=3 Rev. L. J. 197=3 Rev. and Cr. L. J. 112, (evidence that prior to the last revision of records the land had been recorded as grove of the tenant, and that after the settlement the *khatiauni* entry was that it was the occupancy holding of the tenant is not admissible to disprove the settlement *khasra* entry.)

<sup>2</sup> *Jannath Pathak v. Kulka Upadhyat*, 34 All. 235=9 A. L. J. 238=13 I. C. 643

<sup>3</sup> *Ram Saran v. Ram Bhawan*, 19 A. L. J. 653=7 Rev. and Cr. L. J. 277=2 L. R. Rev. 164=IV U. D. 731.

<sup>4</sup> *Banwari Lal v. Ambika Prasad*, II U. D. 667; *Gajadhar v. Gokul*, B. R. 2 of 1902=II U. D. 572, (even though *B* is entered as sub-tenant of the holding under *A*).

to *B*<sup>1</sup> So if *B* claims to pre-empt land entered as the fixed-rate holding of *A* who has sold it, he can prove that events which happened subsequent to the entry made *A* the owner of the land and that his tenancy interest therein has merged in his ownership.<sup>2</sup>

6. **Rate of rent**—Sub-section (1) says nothing about any presumption as to the correctness of the rent or rate of rent recorded. Under the Rent Act X of 1859, any such presumption was negatived.<sup>3</sup> Under this Act it has been held by the High Court that apart from its being good evidence, an entry as to the rent or rate of rent is not conclusive evidence of the fact and it may be shown to be incorrect by proof of the fact that for a large number of years a lower rate of rent has been paid.<sup>4</sup> The Board of Revenue has also held that such an entry raises a presumption of its correctness, but may be rebutted by proof to the contrary.<sup>5</sup> The fact that part of the rent recorded is stated to be as *adamusul* does not disprove the correctness of the entry as to the rent.<sup>6</sup>

7. **A person**.—This read with section 3(1) includes the predecessors and successors in right, title or interest of such person. Hence, if it is recorded that *A* is or is not a permanent tenure-holder or a fixed-rate tenant, the presumption is that persons through whom he claims and persons who claim through or under him, were or were not, or are or are not, such holders or tenants. If *A* is dead or his interest has been sold or assigned, the presumption that would have applied to him also applies to his heirs or assignees.

If a fixed-rate tenant dies leaving rent in arrears, and his heir takes up the tenancy, he is of course liable to pay the arrears. But if he does not take up the tenancy, for instance—if the tenancy has been sold by auction—he is liable for such arrears to the extent of the assets of the deceased in his hands.<sup>7</sup>

8. **Or otherwise**.—The presumption made by this section applies only to entries regarding permanent tenure-holders and fixed-rate tenants, and to no others. For instance, an entry in a settlement record that certain land is *muaji khidmati* or occupancy or exproprietary land

<sup>1</sup> *Jai Nath Pathak v. Kalka Upadhia*, 34 All. 235=9 A. L. J. 238=13 I. C. 643, overruling *Mulai v. Rajwanti*, 3 A. L. J. 842=26 A. W. N. 68.

<sup>2</sup> *Sheo Nandan v. Balgovind*, 45 All. 744=21 A. L. J. 697=4 L. R. Rev. 233=1923 R. C. 472=9 R. and Cr. L. J. 279.

<sup>3</sup> *Anand Moyee v. Shurno Moyee*, 6 W. R. (Act X) 85.

<sup>4</sup> *Benares State v. Jung Bahadur*, 1931 A. L. J. 561=1932 A. I. R. All. 35=XII U. D. (H. C.) 151=12 L. R. Rev. 174.

<sup>5</sup> *Shri Narain Singh v. Sheo Padarath Singh*, B. R. 7 of 1921=3 L. R. 348=8 R. and Cr. L. J. 25.

<sup>6</sup> *Shri Narain Singh v. Sheo Padarath Singh*, B. R. 7 of 1921; *Sri Narain Singh v. Maharaja of Benares*, 1938 A. L. J. (B. R.) 28.

<sup>7</sup> *Maharajah of Benares v. Daljit*, 19 All. 352=17 A. W. N. 88.



has not the conclusively probative value which this section gives<sup>1</sup> Such an entry is, however, good evidence and can be disproved only by strong oral or documentary evidence.<sup>2</sup>

What the expression "or otherwise" means is that where a tenant is prescribed as being of a class other than a fixed-rate tenant or a permanent tenure-holder, it will be conclusive that he is not a tenant of the latter class, as the concluding words of sub-section (1) testify; but there is no conclusive presumption that the description of the class is correct. For instance where a tenant is described as an occupancy tenant, the presumption is conclusive that he is not one of those coming under section 22 or 23 but it is not conclusive as to the exact status of the tenant, i. e., that he is, or is not an occupancy tenant. The fact that he is not an occupancy tenant may therefore be proved *alunde*.<sup>3</sup>

Suppose a plot which ought undoubtedly to have been entered as fixed-rate at the last revision of records is in 1291 F. entered otherwise, e. g., as non-occupancy or occupancy; and it is proved that in the following year, the settlement officer held some of the plots to be parts of a fixed-rate area. Can the court in a suit for ejectment from one of the parts years after go against the revision of record entry, correct it and hold that the plot is fixed-rate? In *Sukhtei v. Mahadro Prasad*<sup>4</sup> the answer was in the affirmative, as the entry gave an erroneous description of the plot.

9. **Judicial decision.**—Where a holding has been mortgaged as fixed-rate holding and in execution of a decree on the mortgage the sale-officer proclaims it to be fixed-rate holding, there is no judicial decision declaring it to be fixed-rate holding.<sup>5</sup>

10. **Where no entry—sub-section (2).**—Though an entry that a person is or is not a permanent tenure-holder or a fixed-rate tenant raises a conclusive presumption in favour of the entry, absence of an entry will not preclude a party from proving his status by other evidence. Section 6 of the Rent Act which enacted that on proof of the fact that the present holder and his predecessors in interest have held the land at the same rate of rent for 20 years, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement, has now been enacted in sub-section (2). Under that Act, proof of the sameness of the rate-rent for 20 years was sufficient to raise a presumption in favour of a fixed-rate tenancy or permanent tenure. Where the settlement record describes the status of a tenant, the question of his being a tenant under section 22 or 23 will be decided by it; but where the record is silent, how is the tenant to

<sup>1</sup> *Raja Ramji v. Abdulla*, B. R. 4 of 1914; *Sadhari v. Deokinandan*, III U. D. 489=5 Rev. and Cr. L. J. 231. See also *Jaimani Musai Ram*, 1 L. R. 52.

<sup>2</sup> *Yad Ram v. Chojju*, 1 L. R. 153.

<sup>3</sup> *Sumera v. Madan Lal*, 1923 R. C. 300=10 Rev. and Cr. L. J. 21=4 L. R. Rev. 389.

<sup>4</sup> XX U. D. 202=1939 R. D. 206.

<sup>5</sup> *Shiam Sunder v. Bindeshwari Prasad*, 3 Rev. and Cr. L. J. 229.

prove that he is one of the favoured class? The only mode indicated was that he had held the land at the same rate of rent since the last settlement. Unless some such presumption as was mentioned in section 6, Rent Act, be made, it would be impossible to establish the status of such tenants. Proof of possession from the permanent settlement is not *per se* sufficient to show that a uniform rate of rent has been paid.<sup>1</sup>

The uniform rate of rent must have been paid as tenant during the whole period of twenty years.<sup>2</sup>

11. **Proviso to sub-section (2).**—Provides for a revision of records after the commencement of the Act as in the proviso to section 13 (2) of the Act of 1926. Such revision makes sub-section (2) inoperative and makes sub-section (1) alone applicable.

25. Every tenant in Oudh holding under a special agreement or a judicial decision made or passed before the passing of the Oudh Rent Act, XXII of 1886, shall be called a tenant holding on special terms, and subject to the terms of such agreement or decree, and save as otherwise expressly provided in this Act, shall have all the rights and be subject to all the liabilities conferred and imposed upon occupancy tenants in Oudh by this Act.

1. **Tenant holding on special terms in Oudh**—The section corresponds to section 71 of the Oudh Act, which was that the expression “special agreement” or “a decree of court” where it was used in the Act to signify the tenure on which land was held by a tenant, was to be construed as referring to an agreement or decree made or passed before the passing of the Act of 1886.

The definition in the section makes the matters clearer.

The words ‘and subject to the terms’ etc., to the end show that primarily the rights and liabilities of tenants under special agreements or judicial decisions are those of occupancy tenants except in so far as a particular agreement or decree may provide otherwise.

The use of the word “decree” in the later part of the section shows that judicial decision in the earlier part means a decree.

In *Pirbhu Dayal v. Thakur Jai Inder Bahadur Singh*,<sup>3</sup> a tenant noted in the *wajib-ul-arz* of 1863 as holding previously at a certain rate of rent and since then liable to pay as rent the amount of the revenue plus twenty per cent., was held to be not an occupancy tenant, but a tenant holding under a special agreement.

2. A special agreement made or decree passed, after the coming into operation of the Act of 1886 is not the special agreement or decree

<sup>1</sup> *Mahomood v. Haresdhan*, 5 W. R. (Act X) 12.

<sup>2</sup> *Mithurjee v. Fitzpatrick*, 11 W. R. 206.

<sup>3</sup> XIII U. D. 4.

used here in connection with describing the tenure of a tenant.<sup>1</sup> Hence, a perpetual lease executed in 1905 made the lessee a statutory (and now a hereditary) tenant only; so a decree passed after the Act of 1886.<sup>2</sup>

3. **Competency of Court.**—In 1868 the only Courts competent to decide such cases were the Settlement Courts, and therefore a decree of a Settlement Court of that time is a decree of Court.<sup>3</sup> Settlement Courts were invested with the powers of Civil Courts. The Rent Act of 1868 defined a Court as any Judicial Officer presiding in a Court of Revenue for the disposal of matters under that Act.

4. Under a Settlement Court decree, a *dahaik* right and the lease of a village were granted to A. A was to deduct this *dahaik* from the rent and pay the difference to the taluqdar. The latter, if and when he gave the lease to other persons, was to pay the *dahaik* to A. The taluqdar was not allowed the unrestricted right of demanding any *jima* he liked from the *dahaikdar*, but the rights between the parties were settled by a Civil Court decree, under which A was to hold at a fair rent determined by a referee, and on failure to accept this rent, the taluqdar was competent to grant the lease to another. A and his heirs have held and do hold under a decree of Court.<sup>4</sup>

5. **Tenancy under a decree, etc.**—The tenancy must have arisen under the decree, (or agreement).

Where a settlement decree entitled A to a *dasaundh* and also to hold the village as lessees, the lease to be determined if the village came under direct management or if the lessees refused to accept a lease on the terms offered by the taluqdar, and A refused to accept the terms as offered, he may be ejected by notice, as A ceased to hold under the decree when he refused to accept the terms offered.<sup>5</sup> This is doubtful.

A mortgage by a person holding a heritable but non-transferable lease under a decree is voidable at the option of the landlord. If the latter accepts rent from the transferee, does he validate the transfer, so as to entitle the mortgagee to continue in possession after surrender of the holding by the mortgagor? No<sup>6</sup>—Yes.<sup>7</sup>

A Settlement Court decree conferring on A under-proprietary rights in the trees standing on a plot of land, and not in the plot of land itself, does not make A a tenant of the plot under the decree.<sup>8</sup>

6. **Subsisting lease.**—The lease must be subsisting. If it has come to an end under its own term, the holding is not under the lease.

<sup>1</sup> *Raghubar Dayal v. Rim Charan*, V U. D. 254—3 L. R. Rev. 522; *Sabba v. Sita Ram*, Oudh Sel. Ca. No. 282.

<sup>2</sup> *Lal Muneshar Baksh Singh v. Gaya Baksh*, I U. D. 353

<sup>3</sup> B R 3 of 1892.

<sup>4</sup> *Bhagirath v. Bhagwati Prasad Singh*, II U D 550.

<sup>5</sup> *Court of Wards v. Parmatma Din*, I U. D. 290.

<sup>6</sup> *Rajpal v. Rudra Pratap Narain Singh*, II U. D. 613.

<sup>7</sup> *Jagraj Kuar v. Gangai Din*, 18 I. C. 383.

<sup>8</sup> *Muhammad Ali Raza Khan v. Menda*, 6 O. C. 341.

A farming lessee the term of whose lease has expired could be proceeded with under section 52(2) of the Oudh Act.<sup>1</sup> There, the settlement court passed a compromise decree conferring a farming lease for 30 years, on payment of the revenue plus a 25 per cent. to the taluqdar, on the claimant for sub-settlement as an under-proprietor. It was contended that the lease was a perpetual one, the 30 years being mentioned only for purposes of the revision of its terms. Their Lordships overruled this contention. Unless a lease for a term is meant to be perpetual, it expires at the end of the term, and hence the heirs of the original lessees who hold on do so as tenants from year to year, even though the landlord accepted rent from them as due under the expired lease.<sup>2</sup>

A lease not containing words to the effect indicated by *naslan bad naslan* does not survive the lessor.<sup>3</sup>

7. A tenant holding under an agreement from a life tenant, such as a Hindu widow, is a tenant under an ordinary cultivatory lease and not under a special agreement.<sup>4</sup>

A decree in favour of A that he held under a special agreement and was not liable to ejectment by notice, did not imply that A's heirs also held under similar agreement and terms, for the agreement might have been personal to A.<sup>5</sup>

Raising of rent by consent does not abrogate a special agreement.<sup>6</sup>

8. *Thekadars* were not tenants holding under special agreements.<sup>7</sup>

The status of a tenant holding on a special agreement or compromise embodied in a decree of court cannot be affected by a wrong description of his status in the revenue papers as under-proprietor.<sup>8</sup>

9. **Terms of decree, etc.**—The result of a litigation to obtain a sub-settlement of a village in a taluqa was that a decree was passed in favour of A for a perpetual lease, the rent to be the settlement officer's estimate of assets less 15 per cent., free from all charges for *chaukidari* and *palwari*. To ascertain whether only tenant rights or under proprietary rights were meant to be created, the decree must be construed with reference to its terms, the judgment on which it was based, and the intention of the court which made it. On a consideration of all these, the court ruled that only lessee rights were meant to be recognised.<sup>9</sup>

A was therefore holding under a decree of court within the meaning of section 52, and the revenue court could therefore entertain a suit for

<sup>1</sup> *Maheshwar Parshad v. Muhammad Etwaz Khan*, 12 O. C. 293—31 All. 394 (P. C.)

<sup>2</sup> *Rameshar v. Abbas Ali Khan*, III U. D. 50—40 I. C. 116.

<sup>3</sup> *Durga v. Gaya Prasad*, III U. D. 362; *Sankatha Prasad v. Rameshar Baksh*, III U. D. 567.

<sup>4</sup> *Hanuman Dutt v. Sri Ram*, B. R. 5 of 1909.

<sup>5</sup> *Muhammad Nawab Khan v. Jag Deo*, I U. D. 213.

<sup>6</sup> *Suraj Bikram v. Ram Datta*, IV U. D. 124.

<sup>7</sup> *Bhagwan Baksh Singh v. Gajraj Koer*, 1926 R. C. 550

<sup>8</sup> *Sarfras Khan v. Rameshar Gid*, XI U. D. 84.

<sup>9</sup> Sel. Ca. No. 282.

the ejectment of *A* under section 108(4) and to eject him under section 52<sup>1</sup> of the Oudh Act.

The intention of the parties to an agreement made soon after the mutiny when all proprietary rights were in abeyance, and when there was no formal law of landlord and tenant, must be gathered, not only from the terms of the document written, but also from acts of the parties showing what they understood by it. If the terms of the documents are entirely inconsistent with the idea of a temporary grant, and the conduct of the parties shows that they treated the grant as a permanent one, it will be given effect to as a special agreement of permanent lease.<sup>2</sup>

Where a tenant of land transferred from Agra to Oudh is described at about the time of the transfer as an occupancy tenant holding in a favoured scale of crop rents, he is a tenant under a special agreement.<sup>3</sup>

Acceptance of rents under an expired term lease does not make the lease hereditary, and after the death of the lessee subsequent to the expiration of the lease, his heir holds as an ordinary tenant.<sup>4</sup>

The person sought to be ejected by suit must be in possession. If he has transferred a heritable and non-transferable lease, a suit for ejectment must be dismissed, as the transferee can be proceeded with by notice and the transferor is not in possession.<sup>5</sup>

In the *wajih-ul-ars* and the under-proprietary register prepared at the time of the Old Settlement, *A* was entered as the sole owner of some land holding it for his maintenance in perpetuity and in hereditary right on a low annual rent, without any power of alienation, but there was no reservation of the right of re-entry on breach of any of the conditions of the grant. It was held that the landlord could not sue to eject on a transfer made by *A*'s successors.<sup>6</sup>

An award purported to grant a village rent-free and in perpetuity but it was found that the right conferred was only personal and not hereditary. The grantee's interest was sold in execution of a mortgage decree against him. After his death, the auction purchaser can be ejected.<sup>7</sup>

Where a claim for under-proprietary rights was compromised in 1868 and withdrawn on the landlord letting the claimant hold the land at a moderate rent "*ba ewaz khidmat taraddud*," it was held that these words did not mean any specific service, breach of which will entitle the landlord to eject. The real agreement was payment of a moderate rent and withdrawal of the claim.<sup>8</sup>

<sup>1</sup> *Sabhu v Sita Ram*, Sel. Ca. No 282, dissenting from Rent Act Ruling No. 58.

<sup>2</sup> *Baldeo Singh v. Bishambhar Nath*, B. R 3 of 1903.

<sup>3</sup> *Jangi Singh v. Muhammad Nur Khan*, III U. D. 448.

<sup>4</sup> *Rameshwar v. Abbas Ali Khan* II U. D. 526.

<sup>5</sup> *Deputy Commissioner v. Ramamund*, III U. D. 476.

<sup>6</sup> *Court of Wards v Muhammad Amir*, 5 O L. J. 149=46 I. C. 73.

<sup>7</sup> *Sambhu Nath v. Rudra Partab Narain Singh*, 12 I. C 324 (O.).

<sup>8</sup> *Muhammad Raza v. Ram Prasad Singh*, III U. D. 529.

A *wajib-ul-arz* of 1863 defined the status of a tenant. It also noted that the tenant originally paid Rs 9 rent for an area of 12 acres, and that the total amount payable in the future was to be limited to a payment equal to the revenue plus 20 per cent. It was held that this created a tenant under a special agreement made before 1886.<sup>1</sup>

If a decree based on a compromise really conferred tenancy rights, the tenant was a tenant holding under a special agreement or decree of court, and the fact that the papers recorded him as an under proprietor did not affect the matter.<sup>2</sup>

See *Fateh Ba'adur Singh v. Nagendra Bahadur Singh*.<sup>3</sup>

The special agreement need not be in writing.<sup>4</sup>

In a settlement decree in 1871 the claim of A to be under-proprietor was dismissed, and a decree for *dasaundh* and for the *theka* of the village was passed. As regards the *theka*, the *thekadar* was given the power to fix a new *jama* or to assess or amend the *jama* in accordance with the practice prevalent in *shahi* times. It was also provided that in any year in which the *talukdar* himself would be incharge of the property or in which A referred the *theka*, A would be entitled to receive the *dasaundh* from the assets of the village. It was held that the expression 'according to the practice in *shahi* times' meant that the assessment should be in accordance with the rates prevalent in the *taluka*, and that it could not be enhanced to an exorbitant decree at the will of the *talukdar*, and that A would be liable to ejectment if he refused to pay rent at the rates prevalent in the *taluka*.<sup>5</sup>

Where in a civil suit for ejectment, on the ground that certain land had ceased to be groveland, and that under the terms of a settlement court decree the grove-holder was liable to ejectment, the tenant pleaded that he was a tenant under the Rent Act and entitled to the occupation of the land, and the Civil Court upheld the tenant's contention, in a subsequent suit for ejectment on the ground that the tenant was liable to ejectment under the terms of the Civil Court decree, the tenant cannot plead that the land was *abadi* and not land to which the ejectment sections applied.<sup>6</sup>

**26. (1)** When the landlord of the whole of a mahal or of a specific area in a mahal transfers the whole of his proprietary right in such mahal or area by voluntary alienation otherwise than under the provisions of sub-section (2) of section 9, or when the whole of such landlord's right in such mahal or area is transferred by foreclosure or sale in

<sup>1</sup> *Pirbhu Dayal v. Jai Inder Bahadur Singh*, XIII U. D. 4.

<sup>2</sup> *Sarfaraz Kuer v. Ramshir Gir*, XI U. D. 84=11 L. R. Rev. 127.

<sup>3</sup> 7 O. L. J. 60=4 R. D. 470=III U. D. 619 (Assignee from a perpetual lessee, transfer being invalid, is only a tenant.)

<sup>4</sup> *Muhammad Asgar Ali v. Nawab Ali*, XVI U. D. 446.

<sup>5</sup> *Lakhpur v. Jagdamba Devi*, XII U. D. 201=12 L. R. Rev. 299.

<sup>6</sup> *Muhammad Rishad Shahid Husain v. Muhammad Husain*, XIV U. D. 119.

execution of a decree or order of a civil or revenue court, the landlord shall become an ex-proprietary tenant of his *sir* and of such portion of his *khudkasht* as he has cultivated continuously for three years at the date of transfer.

(2) When the landlord of a share in a mahal or in a specific area in a mahal so transfers the whole of such share or when such share is so transferred the landlord shall become an ex-proprietary tenant of his *sir* and of such portion of his *khudkasht* as he has cultivated continuously for three years at the date of the transfer and which, in the case of joint *sir* or joint *khudkasht*, is demarcated by the officer empowered to fix the rent of the holding under the provisions of section 36 of the United Provinces Land Revenue Act, 1901.

(3) When the landlord of the whole or of a share of a mahal or of a specific area in a mahal so transfers a part of such whole or of such share, or of such area, or when a part of such whole or of such share or of such area is so transferred, the landlord shall become an ex-proprietary tenant of so much of his *sir* and of such portion of his *khudkasht* as he has cultivated continuously for three years at the date of transfer as appertains or corresponds to such part and is demarcated by the officer empowered to fix the rent of the holding under the provision of section 36 of the United Provinces Land Revenue Act, 1901.

(4) If in the course of proceedings under this section the officer empowered to fix the rent of the holding finds that any of the landlord's *sir* is land to which the provisions of the third proviso to clause (a) of section 6 apply, or that the landlord is a *sir*-holder to whom the provisions of sub-section (2) of section 16 apply, he shall stay proceedings under this section and shall proceed under the provisions of section 15 or section 16, as the case may be, and the provisions of this section regarding *sir* shall not apply to any area in which he orders that the tenants are hereditary tenants.

(5) Every person who becomes an ex-proprietary tenant under the provision of this section, or who, at the commencement of this Act, is an ex-proprietary tenant in accordance with the provisions of any previous Act, or who is or becomes an ex-proprietary tenant under any other enactment for the time being in force shall be entitled to all the rights conferred, and be subject to all the liabilities imposed on ex-proprietary tenants by this Act and, unless the rent payable by him was fixed under the provisions of a previous Act, it shall be fixed in accordance with the provisions of this Act by the officer empowered to do so under the provisions of section 36 of the United Provinces Land Revenue Act, 1901.

(6) A mortgage shall be deemed to be a transfer within the meaning of this section when it has the effect of transferring proprietary possession of the mortgaged property from the mortgagor, but not otherwise.

(7) No right shall accrue under this section in any land transferred for any public or private purpose, inconsistent with the existence of a right of cultivation herein.

(8) For the purposes of this section the word "landlord" shall include an under-proprietor and a permanent tenure-holder and the words "proprietary right" shall include the right of an under-proprietor and of a permanent tenure-holder.

(9) Notwithstanding anything in this section, expropriatory rights shall not accrue in grove-land.

1. **History.**—This corresponds to section 14 of the Agra Act, 1926, and section 7A of the Oudh Act, 1886. Section 14 corresponded to section 7 of the Acts of 1873 and 1881 and to section 10 of the Act of 1901. The Act of 1859 did not recognise any such tenancy which was created for the first time in Agra by Act XVIII of 1873.

Hence a transfer before Act XVIII of 1873 did not create expropriatory rights.<sup>1</sup> The Act gave the right to any person "who may hereafter, (i. e., after the 22nd of December, 1873) lose or part with" his proprietary rights in any mahal, in respect of land held by him as *sir* at the date of such loss or parting. The Courts were concerned mostly with the interpretation of the words 'lose or part with.'

2. **Landlord or under-proprietor or permanent tenure-holder.**— "Landlord" here includes an under-proprietor and a permanent tenure-holder (sub-section 8). The person who transfers must be one of these three. A mortgagee or person in possession for maintenance cannot acquire expropriatory rights. The same applies, *a fortiori*, to lessees in perpetuity of proprietary rights.

Where *A* usufructually mortgaged his zamindari to *B* in 1894, but did not give over possession of the *sir*, and in 1913, in a suit for arrears of rent between *B* and *A*, rent was decreed, as the result of a compromise, at a certain rate, and, *C* having purchased *A*'s proprietary interest at an auction sale, obtained a decree for redemption of the mortgage of 1894 and actual redemption, on the terms of paying not only his mortgage debt but also the arrears of rent due from the tenants to the mortgagee, it was held, in a suit for arrears of rent for a period prior to the redemption, brought by *C* against *A*, that (i) *C* having paid those arrears to *B* was entitled to sue *A* for them, (ii) that no prior fixation of rent under section 36, Land Revenue Act, was necessary as the compromise decree of 1913 had already fixed it, and (iii) by the auction purchase *C* acquired only the equity of redemption of *A*, and as the proprietary interest was vested in the usufructuary mortgagee, *B*, *A* did

<sup>1</sup> *Dharam Das v. Ram Das*, III U. D. 207 ; *Biran Singh v. Neki Ram*, 5 A. W. N. 278.



not acquire exproprietary rights in the *sir*.<sup>1</sup> The last position is clearly not sustainable.

A trespasser who has acquired a title to the zamindari by adverse possession is a proprietor.<sup>2</sup>

Where a father executes a deed of gift, in the form of a trust, in favour of his son, the latter becomes the proprietor and hence if his proprietary rights are sold he becomes an expropriatory tenant.<sup>3</sup>

3. **Proprietary rights.**—*i. e.*, *dominium* or full ownership, per Mahmood, J., in *Inder Sen v. Naubat*.<sup>4</sup> The interest of under-proprietors or permanent tenure-holders is deemed to be proprietary.

4. **Transfers.**—The previous as well as the present Acts make expropriary rights arise on a 'transfer' of proprietary rights either by sale in execution of a decree or order of a Civil or Revenue Court, or by voluntary alienation and include a possessory mortgage amongst transfers.

5. Sub-sections (1) to (3) provide specifically for three sets of cases, *viz.*, (i) transfer by the sole owner of a mahal or of a specific area of the whole of his interest therein, (ii) transfer by a co-sharer in a mahal or in a specific area of the whole of his interest therein, and (iii) transfer by a sole owner or co-sharer of a mahal or of a specific area of a part of his interest. They state the existing law more clearly, and replace sub-sections (1) to (3) of the Act of 1926. Sub-section (4) is new. Sub-section (5) with variations is sub section (4) and the other sub-sections are in effect sub-sections (5) to (8) of section 14 and part of section 15 of the Act of 1926.

6. **Sub-section (1).** Is concerned with item (i) above. The expression "otherwise than under the provisions of sub-section (2) of section 9" means otherwise than by gift *to a person to whom the proprietary right in the sir is transferred*, or by exchange. The portion in italics is new as an addition to section 14 of the repealed Act and emphasizes that expropriary rights in a donor will not arise when the mahal or specific area is transferred along with the proprietary right in the *sir* to the donee but the land will pass as *sir* to the latter. The donee need not be a co-sharer, but may be an outsider. Under the Acts of 1901<sup>5</sup> and 1926, expropriary rights were held not to arise on transfers by gifts, and this was also the view in Oudh,<sup>6</sup> but under the Acts of 1873 and 1881 they did.<sup>7</sup> A bequest

<sup>1</sup> *Panna Lal v. Roshan Lal*, 1927 A. I. R. All. 109=VII U. D. (H. C.) 176=1926 R. C. 350=7 L. R. Rev. 286=12 R. and Cr. L. J. 219=98 I. C. 146=10 R. D. 331.

<sup>2</sup> *Bhagwati Saran Singh v. Rabi Singh*, 31 I. C. 898=I U. D. 63.

<sup>3</sup> *Hunter v. Sharf-uz-zaman*, X U. D. 154.

<sup>4</sup> 7 All. 553.

<sup>5</sup> *Ilahi Buz v. Nand Kishore*, I U. D. 53=31 I. C. 906; *Waris Ali v. Mathura*, III U. D. 114=4 R. and Cr. L. J. 143.

<sup>6</sup> *Ghulam Mustafa v. Hasibunnsa*, XVIII U. D. 272=1937 R. D. 439.

<sup>7</sup> *Dukh Bhanjan v. Jagar Nath Rai*, IV U. D. 581=2 L. R. Rev. 152=7 R. and L. J. 246.

by will was a gift and had the same effect.<sup>1</sup> Where the donor suing to cancel a deed of gift executed by him withdrew the suit on receipt of a sum of money which represented the value of the *sir*-land donated the transaction remained a gift and did not become a sale.<sup>2</sup>

Excheat to the Crown is not a transfer giving rise to expropriatory rights.<sup>3</sup>

*Exchange of zamindari rights* between co-sharers therein did not and will not give rise to expropriatory right.<sup>4</sup> There is no exchange or transfer on a perfect partition. Sections 126, 127 of the Land Revenue Act, however, confer expropriatory rights on *sir* and *khudkasht* (of certain standing) of a co-sharer which has been allotted to another co-sharer, provided the former continues to cultivate it after the allotment. This condition as to cultivation is essential.<sup>5</sup>

If the land was being cultivated by the erstwhile *sir*-tenant, he became a statutory tenant from the date of the partition, unless he acquiesced in his position as sub-tenant,<sup>6</sup> in which event he became the tenant-in-chief on ejectment of the previous owner.<sup>7</sup> If the owner did not himself cultivate it before partition, ejectment of the *sir*-tenant,<sup>1</sup> after allotment did not affect the position.<sup>8</sup>

If the land is in the possession of a mortgagee, no expropriatory rights<sup>9</sup> can arise.<sup>10</sup>

A partition by means of a Civil Court decree did not fall under sections 126, 127, Land Revenue Act, and was not a voluntary alienation, which gave rise to expropriatory rights over *sir* in favour of the erstwhile co-sharers.<sup>11</sup>

<sup>1</sup> *Imamunissa v. Pershad*, I U D 370=2 R. and Cr. L. J. 45=1 R. and Cr. L. J. 95; *Bakriddin Khan v. Zakir Husain*, I U. D. 373=32 I. C. 737.

<sup>2</sup> *Ghulam Mustafu v. Husibunnissa*, XVIII U. D. 272=1937 R. D. 439.

<sup>3</sup> *Bhaqwati Prasad v. Atkinson*, I U. D. 365=1 R. and Cr. L. J. 135.

<sup>4</sup> *Kura Singh v. Challu*, 8 A. L. J. 329=10 I. C. 845.

<sup>5</sup> *Inta Khatun v. Ghani Khan*, XV U. D. 102=15 L. R. Rev. 173; *Bishun Nath v. Ghulam Murtaza*, II U. D. 109=3 R. and Cr. L. J. 107; *Nageshar Rai v. Sheo Dahin Rai*, B. R. 3 of 1912.

<sup>6</sup> See *Jahani v. Ram Dial*, II U. D. 263=3 R. and Cr. L. J. 152; *Drig Bijai Narain Lal v. Mahadeo Prasad*, II U. D. 400; *Lingyat Husain v. Ghasiti*, II U. D. 547; *Bahadur Singh v. Bhawani Singh*, IV U. D. 250.

<sup>7</sup> *Jahani v. Ram Dial*, II U D 263.

<sup>8</sup> *Sundar Lal v. Jura Khan*, IV U. D. 641.

<sup>9</sup> *Ram Sukh v. Kashi Prasad*, III U. D. 231; *Bahadur Singh v. Bhawani Singh*, IV U D 250

<sup>10</sup> *Bindhachal Sahi v. Suraj Das*, XIV U. D. 50; *Misri Lal v. Jageshwar*, IV U. D. 277; *Debi Charan v. Raghubar*, VI U. D. (H. C.) 279=11 R. and Cr. L. J. 1.

<sup>11</sup> *Sheo Paltan v. Sarju*, B. R. 10 of 1934=XV U. D. (B. R.) 30=15 L. R. Rev. 7 16.

The fact that a Civil Court, after the decision of a competent Revenue Court that the area was still *sir*, has declared it to be ordinary *khalsa* land will not mend matters, so far as Revenue Courts are concerned.<sup>1</sup>

Section 126 of the Land Revenue Act has no application to *sir* held jointly and not separately by a co-sharer. Hence if on a partition, the joint *sir* is assigned wholly to one co-sharer<sup>2</sup> or is divided up amongst the co-sharers<sup>3</sup> the person or persons to whom it is assigned hold it as his or their *sir* and not as subject to exproprietary rights in a former co-sharer who may be cultivating it.

But if the co-sharer to whom it has been allotted does not object to the entry of the former co-sharer's name as exproprietary tenant, he cannot subsequently object. If the original *sir*-holder ejects the *shikmi*, and, in a correction of *jamabandi* case between him and the person to whose mahal the *sir* has been allotted on partition, asserts his rights as exproprietary tenant and was successful after a proper and regular trial, his rights as such tenant cannot be subsequently challenged.<sup>4</sup>

If exproprietary rights arising on a perfect partition are not claimed or recorded as such, they cannot be subsequently claimed,<sup>5</sup> except in a case of mistake in the entry,<sup>6</sup> or when the partition was as regards the vendor and vendee in respect of *shamilat* land only,<sup>7</sup> or where the claimant was only a nominal party to the partition, his *patti* not being under partition, and had no occasion to examine or check the records.<sup>8</sup>

It has also been held that when a co-sharer is entered as exproprietary tenant of a land which was not or had ceased to be *sir*, another co-sharer cannot subsequently challenge the entry,<sup>9</sup> but if the entry was against the order of the Court, it will not avail the tenant.<sup>10</sup>

<sup>1</sup> *Muhammad Kazim v. Abu Jafar*, IV U. D. 476=2 L. R. Rev. 81.

<sup>2</sup> *Nand Kishore Pal v. Hatt Pal*, II U. D. 184, 232; *Khalak Singh v. Raghunath Singh*, II U. D. 340; *Jai Mangal v. Dwarka*, II U. D. 438; *Sukhnandan Singh v. Barta*, III U. D. 493.

<sup>3</sup> *Jagdeo Singh v. Hardeo Singh*, II U. D. 40=2 Rev. and Cr. L. J. 25; *Swami Sukla v. Hardwar*, II U. D. 363=3 Rev. and Cr. L. J. 363.

<sup>4</sup> *Drig Bijai Narain Singh v. Muhadeo Prasad*, II U. D. 400.

<sup>5</sup> *Pauhari v. Brjbbhukan*, III U. D. 173.

<sup>6</sup> *Ram Asra v. Bishun*, I U. D. 176=29 I. C. 559, dissented from in *Sahdeo v. Swami Noth*, 2 Rev. and Cr. L. J. 6=II U. D. 49 where *khudkasht* of 12 years of a former co-sharer allotted to another mahal and recorded as *khudkasht* of that co-sharer was held not to deprive him of his claim of exproprietary right, *Madan Singh v. Phool Singh*, 4 L. R. Rev. 264=1923 R. C. 22=V U. D. 481, where a claim for exproprietary rights being withdrawn at partition was not allowed to be made again, *Durga v. Mewa*, B. R. 1 of 1923=1923 R. C. 193=4 L. R. Rev. 25=9 Rev. and Cr. L. J. 265=V U. D. exx; *Hazari Lal v. Raja Rai*, 1923 R. C. 364=4 L. R. Rev. 428; *Gajraj Singh v. Harpal Singh*, IV U. D. 392.

<sup>7</sup> *Goya Singh v. Bhagwan Das Singh*, XIX U. D. 153.

<sup>8</sup> *Hukma v. Har Prasad*, 11 L. R. Rev. 230.

<sup>9</sup> *Dan Singh v. Munshi Singh*, II U. D. 44.

<sup>10</sup> *Kalo v. Nisam Ali*, VI U. D. 148.

Where *khudkasht* of *A* of less than 10 (now 3) years' standing was included in the mahal of *B*, and *A* continued to cultivate it, he did so as a squatter or as a tenant if *B* consented to the continuance.<sup>1</sup> A partition was to be on the papers of 1333, according to the partition proceedings of March, 1926, and was confirmed in 1927. The land recorded in 1333 and 1334 as *khudkasht*, though it may have become *sir* under section 4(d) of the Tenancy Act, 1926, was not allowed to be treated as the expropriatory holding of the holder under section 126.<sup>2</sup>

Where *khudkasht* of more than 10 years' standing cultivated by *A* was allotted to another's mahal as of less than 10 years' standing, *A* could not claim expropriatory rights,<sup>3</sup> nor even though the entry was of 16 years when no expropriatory rights were claimed at the partition,<sup>4</sup> specially if the partition proceedings provided that if owing to excess of *sir*, a portion of *sir* had to go into another co-sharer's mahal, the previous co-sharer had to lose possession.<sup>5</sup>

But if the land was entered as of more than 10 years' *khudkasht* at the partition, the former co-sharer could claim expropriatory rights in respect of it in the mahal in which it was allotted without any assertion of expropriatory rights.<sup>6</sup> The more so, if the land was treated as the expropriatory tenancy of the defendant at the partition.<sup>7</sup> These decisions will hold good by substituting 3 for 10 years.

The rule that partition entries as to the names of tenants is of no or little value does not apply to expropriatory tenants when a person is both a co-sharer and a recorded expropriatory tenant, and once an incorrect entry is made as expropriatory tenant and has not been objected to at the partition, it cannot be subsequently challenged by the parties to the partition.<sup>8</sup>

<sup>1</sup> *Jung Bahadur v. Har Bilas*, B. R. 6 of 1923=V U. D. Ex. VI=4 L. R. Rev. 430=1923 R. C. 450=9 R. and Cr. L. J. 320; *Parmanand v. Arku Lal*, B. R. 19 of 1910: *Bhola Singh v. Kundan Singh*, 4 R. and Cr. L. J. 29=III U. D. 78; *Dwarka Parshad v. Sri Kant*, B. R. 5 of 1919=III U. D. 689=5 R. and Cr. L. J. 214; *Sarju v. Bhihhuti*, III U. D. 494; *Umrao Singh v. Mohan Lal*, IV U. D. 220; *Ram Jas v. Trilok*, XVII U. D. 96=1936 R. D. 258.

<sup>2</sup> *Ram Sewak v. Ram Sarup*, XI U. D. 160; *Vaidya Nath v. Rajendra Kishore*, 11 L. R. Rev. 377=XI U. D. 222

<sup>3</sup> *Shibia v. Umrao Singh*, B. R. 6 of 1913; *Nandan v. Nakched*, B. R. 17 of 1919=1 L. R. Rev. 44=III U. D. 712=6 Rev. and Cr. L. J. 112; *Naulakhi v. Umrao Rai*, IV U. D. 116; *Bhuru v. Tulsar*, III U. D. 290; *Mehr Singh v. Shib Lal*, III U. D. 395; *Ramji Lal v. Jagannath Mal*, IV U. D. 286; *Gauri v. Sheo Shankar Lal*, IV U. D. 106.

<sup>4</sup> *Sarju v. Jokhan Lal* IV U. D. 320.

<sup>5</sup> *Gauri v. Sheo Shankar Lal*, IV U. D. 106.

<sup>6</sup> *Naulakhi v. Umrao*, IV U. D. 116=1 L. R. Rev. 180; *Lajja v. Tota*, IV U. D. 144=7 Rev. and Cr. L. J. 22; *Bachar Singh v. Sripal Singh*, 1922 R. C. 524=V U. D. 389. These decisions are inconsistent with those cited earlier.

<sup>7</sup> *Mahipal Singh v. Ram Adhin*, 8 L. R. Rev. 192.

<sup>8</sup> *Pearey Lal v. Surjo*, XII U. D. 69=12 L. R. Rev. 136.

Parties to a partition cannot enlarge the rights allotted to them.<sup>1</sup> If *A* gets land unburdened with rights, *B* does also, and *vice versa*.

If the *khudkasht* of *A* is, on a perfect partition, allotted to the mahal of *B*, and *A* continues to cultivate it but without claiming exproprietary rights, he does so as a tenant<sup>2</sup> though he has paid no rent.<sup>3</sup> If *A*, after the partition, continues on the land, without the consent of *B* and without the payment of rent, he does so as a trespasser and can be ejected under section 180.<sup>4</sup>

These decisions are not quite consistent with each other, and need reviewing in view of the importance of the subject.

Where exproprietary rights arise on a partition, the person to whom they are given should see to the proper entries being made. If the entries show no such right, he cannot subsequently claim such rights. If he is shown as exproprietary tenant, the fact that he is entered as *bila tasfi lagan* does not affect his status.<sup>5</sup>

A tenant of *khudkasht* land which has been allotted to a co-sharer different from the one who held it before the partition, has tenant right only under section 126 or 127. Land Revenue Act. In other cases, his continuance in cultivation without the consent of the new proprietor makes him a trespasser or holder without the consent of the landlord.<sup>6</sup>

If the partition proceedings record an agreement that the *khudkasht* holder becomes a non-occupancy tenant of the co-sharer into whose mahal his land falls, the non-occupancy tenancy will commence from the date when the partition takes effect. The tenant, in view of the entry in the partition proceedings, cannot be held as a trespasser merely because he had not been paying rent.<sup>7</sup>

A proprietor, who after mortgaging his proprietary rights, is recorded as an ordinary (not expropriatory) tenant of most of the lands in his share, cannot claim, after redemption of the mortgage and subsequent sale of the property, to have exproprietary rights declared in the land so held, inasmuch as such land cannot be his *khudkasht*.<sup>8</sup>

<sup>1</sup> *Rati v. Sardar*, III U. D. 616=5 Rev. and Cr. L. J. 270; *Lallu Singh v. Parthi Singh*, 8 L. R. R. v. 258=VIII U. D. 65.

<sup>2</sup> *Bhuru v. Tulsi*, III U. D. 190; *Bhagwant Singh v. Desraj Singh*, III U. D. 171; *Ram Nath v. Ram Sarup*, 5 Rev. and Cr. L. J. 191=III U. D. 373.

<sup>3</sup> *Rudrapal v. Rustam Singh*, 9 Rev. and Cr. L. J. 23=V U. D. 260=1922 R. C. 537, *Contra*, *Gulal v. Ghusiti*, V U. D. 315=9 Rev. and Cr. L. J. 87=4 L. R. Rev. 26. In *Bellar Singh v. Jafar Khan*, 1923 R. C. 27=9 Rev. and Cr. L. J. 278=V U. D. 483=4 L. R. Rev. 267, where after allotment, *A* was entered as tenant paying rent, the period of 12 years was held to run from the allotment.

<sup>4</sup> *Mahtabi v. Jai Narain*, 8 L. R. Rev. 16=1926 R. C. 553.

<sup>5</sup> *Nanak Prasad v. Chandika Prasad*, XII U. D. (H. C.) 131.

<sup>6</sup> *Ram Nath Singh v. Ram Sarup Singh*, III U. D. 373.

<sup>7</sup> *Kamuz Fatima v. Koolfat*, 7 Rev. and Cr. L. J. 168=IV U. D. 481.

<sup>8</sup> *Udey Ram v. Tota*, 2 U. P. L. R. (B. R.) 59=57 I. C. 74=6 Rev. and Cr. L. J. 210.

A co-sharer who, before partition, hold certain land as the mortgagee of another co-sharer, could, when that land has been allotted to the lot of a third co-sharer, count the period of his occupation before the partition towards the 12 years required for acquisition of occupancy rights.<sup>1</sup>

A person who is not a co-sharer is not bound by an entry as to his status.<sup>2</sup>

At a partition a certain plot was allotted to a *patti* in which *A* had no share. At a sub-sequent partition *A* was recorded as the non-occupancy tenant of that plot. He is not bound by the entry and may prove its incorrectness.<sup>3</sup>

At a partition *A* claimed certain *sir* as his severalty. It was included in the mahal of *B* as the expropriatory tenancy of *A C*, a cousin of *A*, claimed that it had been his *sir* and should be regarded as his expropriatory holding, and he was not liable to ejectment therefrom by *A C* was recorded as sub-tenant of *A*. He was a party to the partition proceedings but did not claim any right in the *sir*. Hopkins, S. M., held the proceedings binding on *C*, but not Fremantle, J. M.<sup>4</sup>

Section 126 has no application if *A's khudkasht* is allotted to his own *kura* and it is immaterial to the other co-sharers what period of occupation is entered against it, as the entry is not binding on them.<sup>5</sup>

A private partition may be deemed to be a voluntary transfer. On such partition, if the co-sharers exchange their *sir*, no expropriatory rights will arise, but if without exchange some *sir* of one co-sharer is included in the land allotted to another co-sharer, such rights will arise,<sup>6</sup> in spite of an agreement to the contrary.<sup>7</sup> If the co-sharer in whose possession *sir* had been before the partition did not claim expropriatory rights, the character of *sir* is lost, and on a sale of his proprietary rights, the co-sharer to whom it has been allotted cannot claim such rights over it, as it never became his *sir*.<sup>8</sup>

In this case, an estate situated in several villages was partitioned between the owners, and *A*, one of the owners was given all the *sir* in one village, *M*, his share of the *sir* in other villages being allotted to other co-sharers. It was held that there was an exchange of *sir* between the co-sharers. If the entire estate in such a case constitutes one mahal, the ruling will hold good now, but not if *M* is in one mahal, and the other villages are in another mahal.

<sup>1</sup> *Mahadeo v. Gur Prasad*, 2 U. P. L. R. (B. R.) 93; *Dwarkan Prasad v. Sri Kant*, 1 U. P. L. R. (B. R.) 35=5 Rev. and Cr. L. J. 214=B. R. 5 of 1919.

<sup>2</sup> *Ilahi Khan v. Rajab Ali*, 11 U. D. 36=32 L. C. 851.

<sup>3</sup> *Sukhdeo Singh v. Ram Subhag Singh*, 111 U. D. 672=1 U. P. L. R. (B. R.) 27.

<sup>4</sup> *Mohan Singh v. Bhola*, 14 U. D. 516.

<sup>5</sup> *Chait Ram v. Hazari Lal*, 14 U. D. 418.

<sup>6</sup> *Ram Prasad v. Dina Kuar*, 4 All. 515=2 A. W. N. 121.

<sup>7</sup> *Kushi Prasad v. Kedar Nath*, 20 All. 219=18 A. W. N. 47. Perhaps this is doubtful now.

<sup>8</sup> *Liyaqat Husain v. Rashid-uddin*, 11 U. D. 176.

Where the members of a joint Hindu family agree on a partition of the family property that the *sir* and *khudkasht* situated in a lot should belong to the person to whom that lot would be awarded, there is an exchange of *sir*.<sup>1</sup>

*Khudkasht* land must have been cultivated for at least three years at the date of the partition, if not, its cultivation continued by the co-sharer (before the partition) after the partition will be as trespasser.<sup>2</sup>

*Foreclosure* gives rise to exproprietary rights. Before 1926, the point was more or less moot in Agra, and the decisions were not uniform.<sup>3</sup> As to Oudh, the Board ruled that such rights arose on foreclosure,<sup>4</sup> but not in a case under section 25 of the Oudh Laws Act.<sup>5</sup>

A sale, private or in execution of a decree, gives rise, as before, to exproprietary rights, *e. g.*, one on a mortgage decree for sale.<sup>6</sup>

A sale of *sir* alone creates exproprietary rights.<sup>7</sup> If the *sir* belongs to all the co-sharers of joint and undivided mahal, a transfer (*e. g.*, by mortgage) of any part of the *sir* by one of the co-sharers would be voidable as against the others,<sup>8</sup> but *sir* belonging to the share of a divided co-sharer may be dealt with by him. In a case of joint *sir*, the fact that each co-sharer has cultivated separate portions of it and some have mortgaged specific numbers does not necessarily lead to the inference of a real and actual division of the *sir* so as to enable another co-sharer to transfer specific numbers.<sup>9</sup>

A mortgage is deemed to be a transfer by virtue of sub-section (6), when it has the effect of transferring possession of the mortgaged property from the mortgagor (but not otherwise). Exproprietary rights arise on the date of the transfer of possession. Usufructuary mortgages are of this kind, but as often happens, the mortgagee, instead of taking actual possession leases the land to the mortgagor by a transaction which forms

<sup>1</sup> *Inderjit Singh v. Gajraj Singh*, 1936 A. L. J. 993=XVII U. D. (H. C.) 161=1336 B. D. 285.

<sup>2</sup> *Ramjas v. Trilok*, XVII U. D. 196=1936 R. D. 258

<sup>3</sup> See *Ram Ghulam v. Julpa Prasad*, II U. D. 549; *Sheo Barat v. Ram Raj*, 4 A. W. N. 273; *Bhagwati Saran Singh v. Rabi Singh*, 31 I. C. 893; *Suroj Baksh Singh v. Bhagwan Din*, B. R. 7 of 1903; *Muhammadd Husain v. Nusir-uddin*, B. R. 12 of 1883; *Bilas Rai v. Abhar Raj Mun.* B. R. 11 of 1920=7 R. and Cr. L. J. 61; *Paras Ram v. Raj Kumar*, 51 All. 760=1929 A. L. J. 549=117 I. C. 620=X U. D. (H. C.) 209=13 B. D. 214; *Koer Singh v. Pahalwan Singh*, 1930 A. L. J. 529.

<sup>4</sup> *Pheru Husain v. Sadiq Ali*, XVII U. D. 362=1936 R. D. 510.

<sup>5</sup> *Mathura Prasad v. Inder Pal Singh*, VI U. D. 81=5 L. R. Rev. (Oudh) 55; *Kanchan Singh v. Muzaffur Husain*, III U. D. 15, 64

<sup>6</sup> *Ghansham Das v. Sheo Mangal*, 11 A. W. N. 150; *Prayag Singh v. Nurul Hasan*, 10 A. W. N. 5.

<sup>7</sup> *Harjas v. Radha Kishen*, 8 All. 256=6 A. W. N. 74.

<sup>8</sup> *Dhanukdhar v. Saudagar Singh*, XIX U. D. 166=1938 R. D. 422.

<sup>9</sup> *Ananta v. Ram Adhar*, XV U. D. 510.

part of one and the same transaction with the mortgage. The device is merely for payment of interest, but the mortgagor begins to hold the land as lessee, and hence proprietary possession has been transferred to the mortgagee, and the mortgagor will hold the *sir* as expropriatory tenant. A transaction by which an owner transfers complete control of his land to his creditor for a number of stated years in consideration of a past debt is a usufructuary mortgage.<sup>1</sup>

This inclusion did away with the force of the Full Bench ruling to the contrary as to mortgages effected after the year 1901. Usufructuary mortgages made before that date will, if still alive, be governed by the Full Bench ruling.<sup>2</sup> Since no expropriatory rights arose, the mortgagee took possession of the *sir*-land as *sir*. If before redemption, the mortgagor's proprietary rights are sold, the mortgagor becomes the expropriatory tenant, and the mortgage attached to the holding,<sup>3</sup> and on redemption could claim it as his *sir* or expropriatory land.<sup>4</sup>

In *Jawahir Singh v. Ram Ghulam*,<sup>5</sup> *A* usufructually mortgaged his *sir* to *B* in 1891, and in 1900 sold five-sixths of it to *C*. The mortgage appears to have been redeemed in 1911, in which year *C* applied to have his name entered as full proprietor free from incumbrances. *A* objected claiming expropriatory rights. It was held that they arose in 1900, but as the possession of the mortgagee, whose lien attached to the expropriatory rights, could not be adverse to *A*, the latter's right to claim possession remained in abeyance until redemption in 1911, and since the claim to the right was made within the period of limitation, *A* was entitled to be entered as expropriatory tenant. The case followed *Shiam Das v. Batul Bibi*,<sup>6</sup> in which it was held that where zamindari rights with *sir* were mortgaged before 1902, the mortgagor became the expropriatory tenant of the *sir* on a sale of the zamindari rights, and the mortgage attached to that, and dissented from *Changoo v. Abdul Ghani*,<sup>7</sup> in which case the Board held that the possession of the mortgagee became adverse to the mortgagor from the date of the sale of proprietary rights by him. In the second case, *viz.*, I U. D. 117, one of three mortgagees had purchased the entire equity of redemption, and it was ruled that as to a third, the right of the mortgagor to claim possession had become barred by time, but as to the two-thirds, the mortgagee's possession was not adverse to the mortgagor.

In 1893, *A* usufructually mortgaged his *sir* to *B* and put him in possession; and then sold the right of redemption to *C*, and took a lease of the *sir*-land from him. Since *A* was not in possession, he could not claim expropriatory rights, and could not be regarded as a lessee,

<sup>1</sup> *Fayaz Ali Khan v. Gobind Ram*, XV U. D. 184=15 L. R. Rev. 38.

<sup>2</sup> See *Babu Lal v. Ram Kali*, 3 A L. J. 40.

<sup>3</sup> *Jawahir Singh v. Ram Ghulam*, B. R. 13 of 1913; *Ram Dhari Singh v. Jugai Singh*, I U. D. 117.

<sup>4</sup> *Ib.* See also XI U. D. 178.

<sup>5</sup> B. R. 13 of 1913 (cited above).

<sup>6</sup> 24 All. 538=22 A. W. N. 155.

<sup>7</sup> B. R. 3 of 1901.

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because the lease was a mere device to oust the mortgagee.<sup>1</sup> The decision merely comes to this that until redemption takes place, a mortgagor who has sold his right of redemption and has thus become the expropriatory tenant of the *sir* comprised in the mortgage cannot claim a right to be recorded as expropriatory tenant, as such entry is based on possession and the persons in possession of the expropriatory holding are the mortgagees.

Where the proprietary rights in *sir*, mortgaged before 1902, were sold after 1902, the mortgagee could hold on until redemption but the vendor could not until then claim actual possession as against the vendee, or to have his name recorded as expropriatory tenant, or to have the rent determined.<sup>2</sup>

Specific plots of *sir* were mortgaged in 1872 and the proprietary rights were sold to the mortgagees in 1889 and 1892. In 1933 the mortgagor obtained a decree for redemption of the mortgage of 1872 and took possession. The expropriatory rights which arose on the sale of the proprietary rights remained in abeyance up to the delivery of possession under the redemption decree and rent could be fixed then.<sup>3</sup>

Out of an eight annas share owned by A in Oudh, he usufructually mortgaged half to B, with the corresponding share of *sir*, but continued in possession of the entire *sir* appertaining to the 8 annas. On the execution of the mortgage, either before or after 1902, A became a tenant with a right of occupancy under section 25 of the Oudh Laws Act, 1876, or an expropriatory tenant, in respect of half the *sir* of the 8 annas share and ceased to have a proprietary right therein.<sup>4</sup>

Any other kind of mortgage, simple, by conditional sale or anomalous, which has the effect of transferring proprietary possession, is a transfer within the section.

There is no transfer where the owner of a property recovers it by suit from a person in possession of it; but there is a transfer where property passes under a decree for specific performance of a contract for its sale.<sup>5</sup> Recovery by the reversioners of a Hindu of property transferred by his widow is not a transfer entitling the transferee to claim expropriatory rights on pre-emption in respect of a sale. No expropriatory rights could accrue to the vendee in the vendor's *sir* or *khudkasht*.

<sup>1</sup> *Sri Niwas v. Gajadhar*, 1 U. D. 101.

<sup>2</sup> *Ram Sunder Rai v. Jang Bahadur Rai*, B. R. 14 of 1920=IV U. D. XXIX=2 L. R. Rev. 12=7 R. and Cr. L. J. 90.

<sup>3</sup> *Lekhraj v. Tewar Singh*, XX U. D. 315=1939 R. D. 24, referring *Jawahir Singh v. Ram Ghulam*, B. R. 13 of 1913=1 R. D. 340 *Ram Sunder Rai v. Jang Bahadur Rai*, B. R. 14 of 1920=1 R. D. 41; *Raj Narain v. Ram Sundar*, XV U. D. 94; *Chunni Lal v. Sri Krishan Singh* (Vol VIII) A. L. R. 167; *Muh. Husain Khan v. Hanuman*, 116 A. L. J. 796=47 I. C. 861; *Ram Das v. Parmanand Gir*, XII U. D. (H. C.) 141.

<sup>4</sup> *Pahlad Singh v. Suraj Baksh Singh*, X U. D. (H. C.) 39=10 L. R. Rev. 23.

<sup>5</sup> *Phundi Lal v. Bindraban*, B. R. 3 of 1926=7 L. R. Rev. 258=VII U. D. (B. R.) 24=1926 R. C. 324=12 R. and Cr. L. J. 181.

A zamindar excluded from settlement under section 74, Land Revenue Act, for refusal to accept settlement and allowed to retain possession of plots in his cultivatory possession at rents to be fixed by the settlement officer is in the position of an expropriatory tenant and liable to ejectment under section 168.<sup>1</sup>

The transferor must be in possession of the *sir* area of his share or recover possession of it within the period of limitation, or expropriatory rights will not arise.<sup>2</sup>

Where expropriatory rights have accrued over *sir* which was in the possession of a trespasser, and the *sir*-holder recovers possession from him within limitation expropriatory rights may be claimed against the transferee.<sup>3</sup>

Where *sir*-holder had conferred occupancy rights in the *sir* and given up possession, he cannot on a sale of his proprietary rights claim expropriatory right even if the conferment of occupancy rights is found to be invalid.<sup>4</sup>

7. **Specific area.**—Sale of proprietary rights in any "specific area" of a mahal will also create expropriatory rights. "Specific area" means an area marked or divided off. For instance, a *nankar*-holder is the proprietor of a specific area. If, after cultivating it himself for 10 years, he sold his proprietary rights, he became an expropriatory tenant of the land. Again, a proprietor may sell a parcel of land containing a specified number of bighas or acres more or less. He becomes the expropriatory tenant of any land comprised in that area which is his *sir*, or part of his *sir*, or which he has cultivated for 3 years.<sup>5</sup>

8. **Shall become, i. e., ipso facto,**<sup>6</sup> in spite of a covenant to the contrary. Non-assertion of the right for a short time does not destroy it unless waiver or abandonment can be inferred,<sup>7</sup> or the law of limitation steps in. Suppose that, after the sale, the vendor does not assert his expropriatory rights. But law says that he is an expropriatory tenant, whether he asserts his claim or not.<sup>8</sup> The nature of the land is therefore changed. It ceases to be *sir* and becomes *khalsa* land. Hence, if the

<sup>1</sup> *Sri Thakur Gatsaran Narayanji Maharaj v. Ghansham*, 1939 A. I. R. All. 533=1939 A. L. J. 910=1939 R. D. 428.

<sup>2</sup> *Chandi Prasad v. Guya Prasad*, 1939 A. L. J. (B. R.) 76=XX U. D. 241=1939 R. D. 272.

<sup>3</sup> *Bhairu Prasad Singh v. Bhirgu Nath Singh*, XVIII U. D. 289=1937 R. D. 451.

<sup>4</sup> *Hans Ram v. Garnda Lal*, XX U. D. 141=1939 R. D. 43.

<sup>5</sup> *Gulab Singh v. Maharaj Kunwar*, II U. D. 668.

<sup>6</sup> *Ramjas v. Sheo Shankar*, B. R. 2 of 1900; *Gulab Rai v. Indar Singh*, 6 All. 54.

<sup>7</sup> *Harihar Buxh v. Gajadhar*, B. R. 11 of 1904; *Tolai v. Muneswar Singh*, 22 A. L. J. 463=5 L. R. Rev. 167=VI U. D. (H. C.) 122. Waiver, however, does not probably apply where the sale is by public auction, *Badal v. Abdul Wahab*, 2 O. L. J. 71=27 I. C. 150=I U. D. 337.

<sup>8</sup> *Gulab Rai v. Indar Singh*, 6 All. 54=3 A. W. N. 207; *Hanuman v. Kariman*, 8 A. W. N. 185.

vendee begins to cultivate land which was the *sir* of the vendor, who does not assert his claim, his cultivation is not that of *sir*-land; and the vendor's right to recover its possession becomes barred in three years' time,<sup>1</sup> and so his right to have the rent fixed.<sup>2</sup> According to the Allahabad High Court, not only his remedy becomes barred, but his right is also extinguished.<sup>3</sup> If the expropriator does not claim expropriatory rights the actual cultivator of the *sir* becomes the tenant-in-chief,<sup>4</sup> that is, a non-occupancy tenant (and not statutory),<sup>5</sup> as admission to tenancy by the person entitled to admit was necessary. If the expropriator did as a matter of fact remain in possession of the land which was his *sir* either by realising the rent from its sub-tenants or by cultivating it himself, there was no question of waiver or limitation.<sup>6</sup>

A difficulty arises in the case of an usufructuary mortgage, where the mortgagor does not take possession and the mortgagee cultivates the *sir* for more than the period of limitation or exercises sole control over it,<sup>7</sup> or lets it to a tenant and expropriatory rights are not claimed during that period.<sup>8</sup> Suppose that his proprietary rights in the mortgaged *sir* plots are sold by auction and a stranger, A, purchases them. He acquires the mortgagor's equity of redemption, but since the land ceased to be *sir* because he did not claim expropriatory rights within the period of limitation of his usufructuary mortgage, no fresh expropriatory rights can be claimed by him as the result of the sale. Even if it is claimed and declared in an *ex parte* mutation proceeding, that makes no difference.<sup>9</sup> So long as the matter rests thus, there is no difficulty. The mortgagee cultivates the land which had been his mortgagor's *sir*, and since he cannot be his own landlord, the *sir* would be regarded as his *khudkasht* and not his tenancy land. Suppose, A redeems the usufructuary mortgage from the usufructuary mortgagee. The mortgagee is on redemption

<sup>1</sup> See section 183 and Group B No. 19 of Schedule 4; *Sultan Husain Khan v. Sewak Singh*, 2 O. L. J. 11=27 I. C. 586=B. R. 12 of 1914; *Bundeshr. Misir v. Raghu Nath*, XV U. D. 448=15 L. R. Rev. 712, or by adverse possession; *Ram Dhar Singh v. Jugul Singh*, 33 I. C. 493=I. U. D. 117; *Nageshar v. Ram Tahal*, 1 O. L. J. 692=26 I. C. 722=I. U. D. 238; *Balak Ram v. Net Singh*, III U. D. 413; *Satish Chandra v. Asfar Husain*, XIV U. D. 273=14 L. R. Rev. 579=17 R. D. 746; *Munna Lal v. Babu Ram*, XIV U. D. 296; *Romji Lal v. Bhagwati Prasad*, XV U. D. 360=15 L. R. Rev. 640.

<sup>2</sup> *Puti Lal v. Muh. Jafar*, XI U. D. 80.

<sup>3</sup> *Dalip Rai v. Deoki Rai*, 21 All. 204; *Ram Lal v. Chummi Lal*, 24 A. W. N. 281; *Changoo v. Abdul Ghani*, B. R. 3 of 1901.

<sup>4</sup> *Ram Nath Singh v. Raja Ram*, 10 L. R. Rev. 48=X. U. D. 36; *Munna Lal v. Babu Ram*, 14 L. R. Rev. 573=XIV U. D. 296.

<sup>5</sup> *Jagrottum v. Kailash Sahi*, XX U. D. 347=1939 R. D. 395.

<sup>6</sup> *Bindra Prasad v. Maharaja of Benares*, 10 Rev. and Cr. L. J. 123=5 L. R. Rev. 93=2 R. L. 557=VI U. D. 110

<sup>7</sup> *Ram Saran v. Sus Ram*, XV U. D. 100=15 L. R. Rev. 322.

<sup>8</sup> *Bishambhar Upadhaya v. Hamid Khan*, 15 L. R. Rev. 146=XV U. D. 85.

<sup>9</sup> *Girdhari v. Ram Pearey*, XV U. D. 156=15 L. R. Rev. 215.

bound to restore the mortgaged *sir*-land to *A* as *khalsa* land in his *khud-kashit*. This is the effect of the decision in *Bisheshwar v. Jagdishwar*.<sup>1</sup> The single judge, however, uses some loose and inaccurate expressions as to the character of the land. It seems that before redemption *A* had rent fixed under section 36, Land Revenue Act, both against the mortgagor and mortgagee, presumably on the supposition that expropriatory rights arose on the auction-sale. The learned judge did not consider the only question in the case that *A* having admitted the mortgagee to be his tenant, however mistakenly, by having the rent fixed under section 36, Land Revenue Act, could sue in a Civil Court for recovery of possession.

The dispossession must be some open overt act, which brings prominently to the notice of the person dispossessed the fact that adverse rights are being exercised, which collecting rents from sub-tenants behind the back of such person is not.<sup>2</sup>

*A* and *B* were two brothers owning a plot of land in a mahal. *A* joined the army after giving *B* a power-of-attorney to mortgage or sell and *B* alone was entered in the papers. *B* executed a mortgage of the entire plot in favour of the zamindar and then sold the equity of redemption to him for a price which went to discharge the mortgage. *B* then was entered as tenant of the plot. It was held that the mortgage and the sale were binding on *A*, and that both he and *B* became expropriatory tenants on the sale, and that the possession of *B* must be deemed to be on behalf of *A* also.<sup>3</sup>

*M* usufructually mortgaged to *A* his proprietary rights in 1874 (no expropriatory rights in *sir* arose then). *C* and *D* became *M*'s heirs on his death. *C*'s half of the right of redemption was sold in 1905 to *R*; and *D* sold his half in 1916 to *K* and relinquished his expropriatory rights. *A*'s father pre-empted the sale of *D*'s half and *A* then became the full owner thereof. In 1921, *R* sold what he had bought in 1905 (*C*'s half) to *A* who thus became owner of *C*'s half as well, subject, however, to any claim to expropriatory rights of *C* or his heirs, if such claim was still alive. *C*'s son sued to establish his rights as an expropriatory tenant. He had of course no claim to *D*'s half. As regards *C*'s half, the expropriatory rights arose on the auction-sale of 1905, but could not be claimed effectually until redemption in 1927; and hence, the suit being within limitation from such date, a declaration as to *C*'s half was given.<sup>4</sup> This case is another illustration of the rule that possession of a mortgagee continued after the accrual of expropriatory rights is deemed to be possession of the mortgagor who has become the expropriatory tenant, and does not amount to latter's dispossession.

Where the zamindari was sold by or in execution of a decree against a Hindu widow in possession of her husband's estate, expropriatory

<sup>1</sup> X U. D. (II. C.) 206.

<sup>2</sup> *Balrajee v. Sarjoo Prasad*, I U. D. 74=27 I. C. 20=1 O. L. J. 759.

<sup>3</sup> *Ram Karan v. Suraj Pal Singh*, VI U. D. 237.

<sup>4</sup> *Brijlleshwar Prasad v. Prag Narain*, XI U. D. 175=11 L. B. Rev. 325.

rights arose in favour of the estate and on the widow's death passed to her husband's heirs.<sup>1</sup> But section 24 of the Act of 1926 prevented his collaterals from succeeding.<sup>2</sup> In *Harihar Prasad v. Mata Prasad*,<sup>3</sup> exproprietary rights were held to arise in favour of the female heir. So in *Bachchraj Singh v. Darag Singh*.<sup>4</sup>

Where a fractional co-sharer in a mahal sold the whole or part of his share, or where a proprietor sold a part of his zamindari, did he become the exproprietary tenant of his purchaser or of the whole body of the proprietors of the mahal? It was held authoritatively that he became the exproprietary tenant of the whole proprietary body and not only of his vendee.<sup>5</sup> *Muhammad Ibrahim v. Ram Kishen Rai*,<sup>6</sup> comes after and follows the Full Bench decision.<sup>7</sup> In *Tapeshra v. Bhola*,<sup>8</sup> it was also held that after ejectment of an exproprietary tenant his holding became the land of all the co-sharers, and they had all to sue to eject a tenant put in by the vendee after the ejectment of the exproprietary tenant.<sup>9</sup> The same view prevailed in Oudh.<sup>10</sup> The court relied on *Khanjan Singh v. Param Singh*,<sup>11</sup> and *Debi Prasad v. Bhagwan Din*,<sup>12</sup> referred to *Janki Das v. Data Ram*,<sup>13</sup> and held the law laid down in *Chotey Lal v. Ram Adhin*,<sup>14</sup> to be bad law.

<sup>1</sup> *Genda Singh v. Fateh Singh*, 18 O. C. 377.

<sup>2</sup> *Bachchraj Singh v. Darag Singh*, III U. D. 516, on the ground that they could not in any case be considered to have shared the cultivation with the husband as tenant, and were not the heirs of the widow.

<sup>3</sup> I U. D. 305.

<sup>4</sup> III U. D. 516=4 R. D. 340.

<sup>5</sup> *Debi Prasad v. Bhagwandin*, 35 All. 27=10 A. L. J. 437=16 I. C. 399; followed in *Jang Bahadur v. Harbilas*, 9 R. and Cr. L. J. 320=1923 R. C. 450=B. R. 6 of 1923=V U. D. cxxxvi=4 L. R. Rev. 480; *Sohan Lal v. Mukhan Lal*, 12 Rev. and Cr. L. J. 174; *Har Karan Singh v. Graman*, 7 L. R. Rev. 314=12 Rev. and Cr. L. J. 253; *Raghubir v. Gauri*, 1930 A. L. J. 65=1929 All. 803 (therefore surrender in favour of one gives no exclusive right to him); *Thakur Prasad v. Sheo Pujan*, 9 L. R. Rev. 250=IX U. D. 68. There was a conflict of decisions before this ruling, as shown by the following cases.—*Bhagwandin v. Debi Prasad*, 12 I. C. 530; *Kishorilal v. Todar Singh*, 9 A. L. J. 244=13 I. C. 535; *Chhotelal v. Rimadhin*, 13 O. C. 70=5 I. C. 945 (S. A. No. 538 of 1907, decided on 19-3-1909); *Tapeshra v. Bhola*, II U. D. 97.

<sup>6</sup> 10 A. L. J. 95=16 I. C. 487.

<sup>7</sup> *Debi Prasad v. Bhagwandin*, 35 All. 27=10 A. L. J. 437.

<sup>8</sup> II U. D. 97.

<sup>9</sup> *Thakur Prasad v. Sheo Pujan*, 9 L. R. Rev. 250=IX U. D. 68.

<sup>10</sup> *Mohan Singh v. Hanuman Singh*, XVII U. D. (H. C.) 35=1936 R. D. 56.

<sup>11</sup> Luck. 228=11 R. D. 131.

<sup>12</sup> 10 A. L. J. 437.

<sup>13</sup> XIV U. D. 1=14 L. R. Rev. 120.

<sup>14</sup> 13 O. C. 70.

Hence the vendee alone cannot sue for expropriatory rent.<sup>1</sup> If the co-sharers allow the purchaser alone to sue for arrears of rent, etc., the tenant becomes his tenant,<sup>2</sup> so if the vendee had the land demarcated and the rent fixed and had ejected the expropriatory tenant, he alone became the landholder and can sue alone to eject a trespasser upon the land.<sup>3</sup> So where the expropriatory holding is relinquished the land belongs to all the co-sharers and the vendee alone cannot sue to eject the recorded sub-tenants of the *sir*.<sup>4</sup> In *Chota Mal v. Amin Singh*,<sup>5</sup> the members differed as to whether an expropriator became the tenant of the vendee alone or of all the co-sharers.

Surrender may be made to the mortgagee under an usufructuary mortgage which gave rise to the expropriatory tenancy,<sup>6</sup> and if he enters into possession and sows crops on it, the other co-sharers although entitled to their share of the profits, cannot forcibly enter on the plot and appropriate part of the crop. If they do so, they are liable to damages and the mortgagee is entitled to a decree for possession and for damages.<sup>7</sup>

If an expropriatory tenant has relinquished, his right to collect rent passes to the purchaser,<sup>8</sup> specially if the occupants have been let in by the purchaser, although he becomes the tenant of the whole co-parcenary body.

Expropriatory rights are lost on relinquishment and delivery of possession or by allowing the purchaser to collect rents from the tenants in possession.<sup>9</sup>

The purchaser cannot recover possession from a person holding from the vendor under a lease,<sup>10</sup> or a mortgage,<sup>11</sup> made before the sale.

An obvious result of the declaration in the section is that since an expropriator becomes the expropriatory tenant of the *sir*, a tenant of his *sir*-land, who was a non-occupancy tenant thereof before the transfer, becomes *ipso facto* the sub-tenant of the expropriator in respect of such land.

<sup>1</sup> *Mohan Singh v. Hanuman Singh*, XVII U. D. (U. C.) 35=1936 R. D. 56.

<sup>2</sup> *Mithan Lal v. Jhandu*, XI U. D. 199; *Janki Das v. Data Ram*, XIV U. D. 1=14 L. R. Rev. 120.

<sup>3</sup> *Ram Phol v. Kundan Lal*, 1938 A. L. J. (B. R.) 117.

<sup>4</sup> *Ramlagan v. Ramlagan*, III U. D. 480, *Contra*, *Lekhraj v. Manraj*, III U. D. 594=2 U. P. L. R. (B. R.) 137.

<sup>5</sup> IV U. D. 369.

<sup>6</sup> *Ram Prasad Singh v. Nepal Singh*, 47 All. 600=23 A. L. J. 368=6 L. R. Rev. 163=VI U. D. (H. C.) 491=1925 R. C. 285.

<sup>7</sup> *Jhullar Rai v. Raj Narain Rai*, 1935 A. L. R. All. 781=1935 A. L. J. 1072=XVI U. D. 364.

<sup>8</sup> *Mannu v. Bhagwat*, IV U. D. 161=7 Rev. and Cr. L. J. 149.

<sup>9</sup> *Raghunath Dayal v. Sri Shambhu Prasad*, VII U. D. 5=1926 R. C. 107.

<sup>10</sup> *Ghura v. Sital*, 36 A. 248=12 A. L. J. 370=23 I. C. 103.

<sup>11</sup> *Jawahir Singh v. Ram Ghulam*, B. R. 13 of 1913=1 R. D. 340.

*A* granted a perpetual lease of *sir*-land to *B* in 1917 for the purpose of planting a grove, and in 1928 his proprietary rights were sold to *C*, and the question was to the exact status of *B* and as to who was to receive the rent from him. The Board held that the land retained its *sir* character in spite of the lease, and that on the sale of the proprietary rights in 1928, *A* became the exproprietary tenant of the leased *sir*. The Board also held that as the lease made *B* a non-occupancy tenant of the *sir* (and not a sub-tenant), the sale did not make him a sub-tenant and that *B* ought to pay his rent to *A* and not to *C*. This implies that *B* is not a sub-tenant after the sale, but what is his exact position? He cannot be a tenant-in-chief holding under *A*, a tenant-in-chief, and he was held not to be a sub-tenant.<sup>1</sup>

*A* mortgaged his fractional share in *zamindari* in 1882 and sold his equity of redemption in 1888 to *B*, who redeemed the mortgage in 1928. Exproprietary rights did not arise in 1882 or 1888, but on the date of redemption in 1928, and must be claimed within six months thereof.<sup>2</sup>

The fact that the land was misdescribed at subsequent settlement and partition as *non sir*, e. g., as mortgagee's *khudkasht* or fallow or non-occupancy land, did not affect its character, so as to prevent the mortgagor from getting it as *sir* on redemption<sup>3</sup>; or so as to prevent the mortgagor or his assignee from suing to redeem the mortgage of the *sir*.<sup>4</sup> A sale of proprietary rights, whether before or after 1st January, 1902, made him the exproprietary tenant of such land,<sup>5</sup> and since the validity of a mortgage, which was good at the time it was made, could not be affected by subsequent acts of the parties or by a subsequent enactment, the mortgage of the land which had been *sir* stood and attached to the exproprietary holding created by the sale.<sup>6</sup>

The mortgagee therefore remained in possession of such exproprietary holding as mortgagee of the exproprietary tenant. His possession was therefore that of the mortgagor and not adverse to him.<sup>7</sup> On redemption of the mortgage, the mortgagor was entitled to assert his exproprietary right.<sup>8</sup> Before redemption, the

<sup>1</sup> *Badal v Aminuddin*, XII U D 119=12 L R. Rev 110.

<sup>2</sup> *Farid Ahmad Khan v. Lachmi Narain*, XIV U. D. 138=14 L. R. Rev. 522.

<sup>3</sup> *Turbeni Nank v. Dhajju*, XII U. D. 106.

<sup>4</sup> *Ram Das v. Parmanand Gir*, 1931 A. L. J 151=XII U. D. (H. C.) 141.

<sup>5</sup> See *Brijlleshwari Prasad v. Prag Narain*, XI U. D 175=11 L. R. Rev. 225.

<sup>6</sup> *Shyam Das v. Batul Bibi*, 24 All. 538 ; *Jawahir Singh v. Ram Ghulam*, B. R. 13 of 1913 ; *Ramdhari Singh v. Jugul Singh*, 33 I. C 483=I U D 117 ; *Naurang Singh v. Phelu*, IX U. D. (H C) 180=9 L. R. Rev. 237=12 R. D 391=116 I. C. 878.

<sup>7</sup> *Ib.*, *Brijlleshwari Prasad v. Prag Narain*, XI U. D. 175.

<sup>8</sup> *Ib.*, *Khedu v. Prayag Singh*, IV U. D. 136.

right of the mortgagor to obtain actual possession remained in abeyance;<sup>1</sup> and a claim for possession made within limitation after redemption was in time.<sup>2</sup> There are some cases which held that the possession of the mortgagee became adverse to the mortgagor from the date of the sale of proprietary rights by him.<sup>3</sup> They are not good law.

In fact it had been held that in cases of usufructuary mortgages before 1902 and sales of proprietary rights thereafter, the mortgagor was not entitled to claim possession before redemption,<sup>4</sup> although he could get his status declared and rent fixed before redemption.<sup>5</sup> Redemption must be deemed to have taken place at least when it was alleged openly by the parties in the presence of claimants to the right, and it was not necessary for the claimant to wait until the actual order of the court in mutation. A suit not brought within six months of the date on which the person claiming expropriatory right had full knowledge of the redemption was barred.<sup>6</sup>

When the expropriator could not get actual possession of *sir* which was in the possession of a mortgagee from before the sale, he (and not the purchaser) could redeem the mortgage.<sup>7</sup>

Where at the date of an auction-sale of proprietary rights the *sir* is in the possession of a lessee and the purchaser got the lease cancelled and the lessee ejected, expropriatory rights arose from the date of the sale, but the formor's right of possession as such tenant accrues on the date of cancellation of the lease.<sup>8</sup>

A's father mortgaged his share in 1887. In 1910 A took a lease of certain *sir* plots in this share as an ordinary tenant. In 1915, the mortgagee enforced the charge and purchased the zamindari share in the execution of his decree. The land was all the time recorded as *sir*, and was in the possession of A. A has become an expropriatory tenant.<sup>9</sup>

<sup>1</sup> *Ram Das v. Parmanand Gir*, 1931 A. L. J. 151=XII U. D. (H. C.) 141 ; *Brijleshwari Prasad v. Prag Narain*, XI U. D. 175=11 L. R. Rev. 225.

<sup>2</sup> *Jawahir Singh v. Ram Ghulam*, B. R. 13 of 1913 ; *Rama Nand Lal v. Gulab Singh*, IX U. D. 161.

<sup>3</sup> *Changoo v. Abdul Ghani*, B. R. 3 of 1901 ; *Ram Dhari Singh v. Jugul Singh*, I U. D. 117=33 I. C. 483 ; *Aprup Rai v. Bhikam Chand*, III U. D. 407 ; *Balak Ram v. Net Singh*, III U. D. 413 ; *Deo Nath Singh v. Madhuri Das*, B. R. 3 of 1920.

<sup>4</sup> *Raghubar v. Man Sukh Rai*, II U. D. 245 ; *Jalaluddin v. Khairu Khan*, II U. D. 411 ; *Ram Sundar Rai v. Jang Bahadur Rai*, B. R. 14 of 1920=2 L. R. Rev. 12=7 R. and Cr. L. J. 70.

<sup>5</sup> *Sheo Gobind Rai v. Naujudik Rai*, III U. D. 74=4 R. and Cr. L. J. 23. 82.

<sup>6</sup> *Raj Narain v. Ram Sundar*, XV U. D. 94=15 L. R. Rev. 316.

<sup>7</sup> *Ridha Mohan Dutt v. Sheo Pargas*, XV U. D. 487=15 L. R. Rev. 68.

<sup>8</sup> *Lalu Ram v. Bhoop Singh*, II U. D. 197=3 Rev. and Cr. L. J. 89.

<sup>9</sup> *Sheo Rani v. Mahabir Singh*, 4 Rev. and Cr. L. J. 16 and 146=III U. D. 69. T. A.—20



The fact that *A* did not claim exproprietary rights on the sale was considered immaterial inasmuch as he remained in possession.

Exproprietary rights are not lost by execution of a kabuliat for an unspecified period.<sup>1</sup>

The transferee may confer larger rights on the transferor, *e.g.*, a permanent, heritable and transferable lease, in which case he cannot eject the transferor on a transfer.<sup>2</sup>

9. **Relinquishment**—Now, as before the Act of 1901, there is nothing to prevent an exproprietary tenant from waiving or relinquishing his rights at once after the sale,<sup>3</sup> and there is no objection to relinquishment by a separate deed executed on the same day as the sale deed or subsequently, if it is a *bona fide* transaction, and not entered into only to avoid the provisions of the section.<sup>4</sup> The fact that he did not take possession after the sale, with other circumstances, was evidence of surrender.<sup>5</sup> But if the sale was in execution of a decree, failure to take possession was not necessarily waiver.<sup>6</sup> In such an event the actual cultivator of the *sir*-land at the time of the sale will become the tenant-in-chief thereof. *A*, by usufructually mortgaging his land, became exproprietary tenant of his *sir*. He was ejected and the land was cultivated for a year by another. He then took the land by a fresh agreement. He is not an exproprietary tenant.<sup>7</sup> *A* makes a simple mortgage of his zamindari in favour of *B* and then usufructually mortgages a portion of it to *C* and relinquishes his *sir* right in favour of *C*. *B* obtains a decree on his mortgage and purchases the mortgaged property. *C* was a party to the suit. *B* is entitled to the land which had been *sir* in *C*'s possession.<sup>8</sup>

A relinquishment not accompanied by surrender of possession was ineffective,<sup>9</sup> specially if the deed of relinquishment was executed on the same day as the sale. Collection of rent from sub-tenants by the expropriator is continuance in possession.<sup>10</sup> But if the vendee collects

<sup>1</sup> *Shahzada v. Raghubar*, II U. D. 415; *Hur Gyan v. Tulsi Ram*, II U. D. 47<sup>a</sup>.

<sup>2</sup> *Parbat v. Raghunath Ram*, 2 L. R. Rev. 25=IV U. D. 181.

<sup>3</sup> *Kuar Sen v. Darro Kuar*, 13 A. W. N. 182.

<sup>4</sup> *Lekhraj v. Parshadi*, 6 A. L. J. 713=2 I. C. 409; *Kamla Charan v. Sheo Shankar*, 3 Rev. and Cr. L. J. 23; *Gaya Singh v. Udit*, 13 All. 396; *Bharat Singh v. Debi Dayal*, 6 A. L. J. 555=2 I. C. 261.

<sup>5</sup> *Harihar Baksh v. Gajadhar Baksh*, B. R. 11 of 1904. See also *Tolai v. Muneshar Singh*, 22 A. L. J. 463=VI U. D. (H. C.) 122=5 L. R. Rev. 167.

<sup>6</sup> *Badal v. Abdul Wahab*, I U. D. 337.

<sup>7</sup> *Debi Prasad v. Jawahir*, B. R. 3 of 1889.

<sup>8</sup> *Dhani v. Raj Mahal*, 13 A. L. J. 651=1 R. and Cr. L. J. 20.

<sup>9</sup> *Gaya Singh v. Raggha*, 30 I. C. 792=I U. D. 28; *Muhammad Ashraf v. Gaya Prasad*, 20 L. J. 42=27 I. C. 534=I U. D. 344; *Sristi Rai v. Ramdeo Rai*, III U. D. 500; *Peary Lal v. Bans Bahadur Singh*, 2 U. P. L. R. (B. R.) 144; *Raunak Ali v. Rameshar Singh*, 7 Rev. and Cr. L. J. 137=IV U. D. 355; *Masitulla v. Kallu*, 9 Rev. and Cr. L. J. 31=V U. D. 187=1922 B. C. 385; *Chotey Lal v. Lal Singh*, 1922 R. C. 195.

<sup>10</sup> *Sristi Rai v. Ramdeo Rai*, III U. D. 500.

the rents behind the back of the vendee or his heir this does not amount to dispossession of the latter.<sup>1</sup> An expropriator retaining possession of the *sir* since the date of the sale of his proprietary rights could claim expropriatory rights in respect of the *sir* at the time of the mutation proceedings, even though this took place more than a year after the date of the transfer,<sup>2</sup> and even after, though he refused to claim it in the mutation proceedings under section 36, L. R. Act.<sup>3</sup>

Where a guardian of minors, himself a co-sharer, mortgaged the zamindari, relinquished *sir* rights, and himself executed a kabuliat in favour of the mortgagee, held that the minors must be deemed to be in possession and to have expropriatory rights.<sup>4</sup>

But a proprietor could not sell his expropriatory rights with his proprietary rights. A stipulation in a sale-deed that the vendor would relinquish the expropriatory holding at the end of a year, was not a formal surrender and is invalid.<sup>5</sup> Where a vendor of zamindari rights disclaimed, in the sale-deed, any rights which might accrue to him as expropriatory tenant in respect of *sir* lands, and recited that he had relinquished his expropriatory rights from the date of the sale, it was held that the purchaser could not by suit recover possession of the *sir*-land or a proportionate part of the price,<sup>6</sup> nor can he recover damages for failure to deliver possession of *sir* and *khudkasht* land.<sup>7</sup>

A stipulation in an usufructuary mortgage-deed to keep the accruing expropriatory rights in abeyance during the currency or term of the mortgage is void.<sup>8</sup>

In *Motichand v. Ikramullah*.<sup>9</sup> Their Lordships of the Privy Council say "the policy of Act II of 1901 is to secure and preserve to a proprietor.....a right of occupancy in his *sir*-land.....and that such right of occupancy is by the Act secured and preserved to the proprietor, who becomes by a transfer the expropriator, whether he wishes it to be secured and prescribed to him or not, and notwithstanding any agreement to the contrary between him and the transferee.

"The policy of the Act is not to be defeated by any ingenious devices, arrangements, or agreements between a vendor and a vendee for the relinquishment by the vendor of his *sir*-land or.....for a reduction of purchase-money on the vendor's failing or refusing to relinquish such land ; or for the vendor being liable to a suit for breach of contract on

<sup>1</sup> *Balrajee v. Sarju Prasad*, 1 U. D. 74.

<sup>2</sup> *Balrajee v. Sarju Prasad*, 1 O. L. J. 759=27 I. C. 20=1 U. D. 74.

<sup>3</sup> *Raunak Ali v. Rameshar Singh*, IV U. D. 355.

<sup>4</sup> *Chajjoo v. Hardhan*, IV U. D. 94.

<sup>5</sup> *Bhikam Singh v. Har Prasad*, 19 All. 85=16 A. W. N. 167.

<sup>6</sup> *Bhikam Singh v. Har Prasad*, 19 All. 85=16 A. W. N. 167, per Mahmood J., in *Sutal Prasad v. Amtul*, 7 All. 633.

<sup>7</sup> *Ikramullah v. Motichand*, 33 All. 695=1 I. C. 17=8 A. L. J. 826 affirmed by the Privy Council in *Motichand v. Ikramullah*, 39 A. 173.

<sup>8</sup> *Satish Chandra v. Asfar Husain*, XIV U. D. 275=14 L. R. Rev. 579.

<sup>9</sup> 9 All. 173 (at p. 177).

his failing or refusing to relinquish such lands. All such devices, arrangements, and agreements are in contravention of the policy of the Act, and are contrary to law and are illegal and void." A covenant in a sale-deed, containing an agreement to surrender *sir* rights, that the vendee will get property of a certain net income and will be entitled to deduct a proportionate sum from the part of the price retained by him as guarantee that the property will yield that income was not void.<sup>1</sup>

After an execution sale of two villages but before its confirmation, the auction-purchaser and the judgment-debtor agreed for their mutual advantage that one of the villages would be retransferred by a deed of exchange to the debtor, who would give certain properties to the purchaser and would relinquish his exproprietary rights in the other village in favour of the purchaser. The sale was confirmed. The purchaser did not carry out his engagement and the erstwhile debtor sued him for a declaration that the defendant had no interest in the village stipulated to be retransferred to him and for damages for breach of contract and the suit was dismissed as unmaintainable as the transfer of exproprietary rights was illegal. On appeal by the plaintiff, a Bench of the High Court ruled that there was nothing illegal in the stipulation in the agreement and decreed the suit.<sup>2</sup> Looking at the facts of the case and the actual decision, there is no difficulty. On confirmation of the sale, the sale became absolute from the date of the sale and not from the date of its confirmation, and exproprietary rights arose on the date first mentioned. Having got exproprietary rights he could relinquish it under Act II of 1901, and the agreement to relinquish plus the institution of the suit by him and the absence of any allegation in the defence that the plaintiff was in possession of his erstwhile *sir* as exproprietary tenant, showed conclusively that he had actually surrendered his tenancy.

Even if a portion of the price was assigned to the relinquishment of proprietary rights, and the vendor covenanted to return it in case he asserted such right, the purchaser could not, in the latter event, succeed in a suit for a refund of that portion of the consideration.<sup>3</sup>

On the other hand, if the purchaser got into possession under the covenant, the vendor could not sue to recover it, without tendering the portion of the consideration which was the price of the *sir*.<sup>4</sup>

<sup>1</sup> *Buthal Das v. Raghunath Das*, V U D (H. C.) 59=1922 R. C. 353. See also *Chandra Sen Singh v. Bhagwan Singh*, 3 O. W. N. 51=91 I. C. 938; *Hasan Baqar v. Shoo Narain*, 3 O. W. N. 25=91 I. C. 917.

<sup>2</sup> *Shyam Lal v. Budh Sen*, 1934 A. I. R. All. 921=XV U. D. (H. C.) 142=15 L. R. Rev. 410.

<sup>3</sup> *Murlidhar v. Pemraj*, 29 All. 205; *Dipan Rai v. Ram Khelawan*, 32 All. 383=7 A. L. J. 330=5 I. C. 557; *Bharat Singh v. Debi Dayal*, 6 A. L. J. 555=2 I. C. 261; *Rajwantu v. Dewan*, 25 I. C. 182; *Kanhai v. Tilak*, 16 I. C. 42; *Puran Singh v. Jai Singh*, 17 I. C. 522; *Bhuvran Prasad v. Kuru Mal*, 15 A. L. J. 534.

<sup>4</sup> *Fasihuddin v. Karamatullah*, 8 A. W. N. 128; *Bahoran v. Uttamgir*, 33 All. 779=8 A. L. J. 931; *Rup Singh v. Beera*, 29 I. C. 490=I U. D. 210=1 Rev. and Cr. L. J. 3; *Disheshwar v. Rup Narain*, 26 A. L. J. 401.

This rule did not apply to a *bona fide* lessee from the mortgagor, *i. e.*, if he took his lease without notice of the mortgage, *e. g.*, when the deed was unregistered, he could recover possession from the mortgagee without paying the mortgage money.<sup>1</sup>

An allowance to the vendor stipulated for as consideration for the relinquishment of expropriatory rights and made a charge on the property sold, could not be recovered.<sup>2</sup> The soundness of this ruling is open to grave doubts for the allowance was consideration for the surrender of expropriatory rights long after they had arisen.

A perpetual lease of *sir* to the vendor's father was void and did not affect the expropriatory rights of the vendor.<sup>3</sup> A collusive lease of *sir* to defeat section 14 of Act 3 of 1926 (section 26 of the present Act) was void.<sup>4</sup>

A permanent lease of *sir* three days before the transfer of proprietary rights to the lessee is void as a colourable transaction, and does not affect the accrual of expropriatory rights.<sup>5</sup>

A granted a usufructuary mortgage of his zamindari with *sir* to B, who on the same day passed a *theka* of the mortgaged property to A. This is a device to defeat the expropriatory rights that accrued to A on the mortgage and is void as against A so far as *sir* lands are concerned.<sup>6</sup>

Similarly, a relinquishment of expropriatory rights followed by a lease of the same lands to the expropriator was a device to defeat expropriatory rights.<sup>7</sup> In this case the surrender was by and the lease was in favour of one of two expropriators.

So also a permanent lease of *sir* to A followed by sale to his father is invalid.<sup>8</sup>

A stipulation in an agreement of partition not to cultivate any *sir* which might be allotted to another co-sharer was illegal.<sup>9</sup>

It came to this that though a proprietor could, *in fact*, give up his expropriatory rights, when they accrued, by not availing himself of them, he could not bind himself by an express stipulation to that effect in a

<sup>1</sup> *Habibullah v. Manrup*, 40 A. 228=16 A. L. J. 137=4 R. and Cr. L. J. 54

<sup>2</sup> *Ratan Dei v. Durga Shankar*, 39 A. 645=17 A. L. J. 656=3 Rev. and Cr. L. J. 263.

<sup>3</sup> *Kawalpat v. Girdhari Ram*, III U. D. 138.

<sup>4</sup> *Hem Kuar v. Sewa Ram*, 2 U. P. L. R. (B. R.) 15=5 Rev. and Cr. L. J. 95=IV U. D. 140.

<sup>5</sup> *Ram Prasad Lal v. Phulawan*, 14 L. R. Rev. 605=XIV U. D. 297.

<sup>6</sup> *Chiranjil Lal v. Sewa Ram*, XII U. D. 28.

<sup>7</sup> *Mashu Lal v. Lekhu Singh*, III U. D. 152=5 R. D. 547.

<sup>8</sup> *Shamdeo Singh v. Dip Narain Singh*, III U. D. 596=4 R. D. 388. See also *Har Saran Das v. Debi Singh*, 1 L. R. Rev. 118=2 U. P. L. R. (B. R.) 90=6 Rev. and Cr. L. J. 262=IV U. D. 159=60 I. C. 245.

<sup>9</sup> *Hanuman v. Kariman*, 8 A. W. N. 185; *Indar v. Khushi*, 6 A. W. N. 38; *Kashi Prasad v. Kedarnath*, 20 All. 219=18 A. W. N. 47.

deed of transfer, partition, etc.<sup>1</sup> An agreement to relinquish could not be enforced.<sup>2</sup>

If a sale and a relinquishment were made by two instruments of the same date they were regarded as one transaction.<sup>3</sup>

If the vendor in fact gave up exproprietary rights, he could not subsequently claim them,<sup>4</sup> and land became *khalsa* and occupancy rights could be acquired over it after 12 years' occupation from the date of the surrender.<sup>5</sup>

If exproprietary rights are surrendered and the vendee gets possession the expropriator cannot repudiate the relinquishment.<sup>6</sup>

A deed of relinquishment of exproprietary rights executed with one of usufructuary mortgage was null and void. But if the mortgagor did not take possession as exproprietary tenant for many years, his sons who acquire possession thereafter cannot revive the exproprietary rights extinguished long ago by lapse of time and are trespassers.<sup>7</sup>

An uncle and nephew who were two co-sharers in a zamindari by agreement divided their *sir*. The nephew sold his *sir* and along with his uncle relinquished his exproprietary rights over it. The uncle cannot now claim *sir* rights over such *sir*.<sup>8</sup>

If after loss of proprietary rights, cultivatory possession over *sir* lands of the former proprietor was not proved, no exproprietary rights could be presumed to have arisen.<sup>9</sup>

It followed that a usufructuary mortgagee of *sir* rights could not recover physical possession of the land or the mortgage-money and damages, but could get rent assessed on the exproprietary holding.<sup>10</sup>

If the vendor in spite of relinquishment of exproprietary rights retained possession of some of the *sir* plots, he remained an expropriary

<sup>1</sup> There is a large number of cases against the validity of such express stipulations, some of them being *Gulab Rai v. Indar Singh*, 6 All. 54=3 A. W. N. 207; *Hanuman v. Kariman*, 8 A. W. N. 185; *Parshudi v. Sadhari*, 5 A. W. N. 220; *Tirmal v. Bholi*, 4 A. W. N. 169; *Naubat v. Mohan*, 1 L. R. 92.

<sup>2</sup> *Indar Sen v. Naubat*, 7 All. 847; *Sheobarat v. Ram Raj*, 4 A. W. N. 273; *Raghubans v. Brijnandan*, 6 A. L. J. 477; *Baldeo v. Kundan*, 13 A. W. N. 27; *Khurshed Ali v. Wazir-un-nissa*, 7 A. L. J. 778=6 I. C. 857.

<sup>3</sup> *Mirdad Khan v. Ramzan Khan*, 40 All. 449=16 A. L. J. 829=4 Rev. and Cr. L. J. 103.

<sup>4</sup> *Ram Dulari v. Sheopal*, 6 L. R. Rev. 55=11 Rev. and Cr. L. J. 93=VI U. D. 374. It is a question of fact in each case whether the *res gestae* amount to actual surrender, see *Har Saran Das v. Deb Singh*, IV U. D. 159.

<sup>5</sup> *Muse v. Suraj Bali*, IV U. D. 575=2 L. R. Rev. 246=8 R. and A. L. J. 61.

<sup>6</sup> *Zafar Mahdi Khan v. Jwala Prasad*, X U. D. 203.

<sup>7</sup> *Bilasi Singh v. Ram Chander Singh*, XVIII U. D. 301=1937 R. D. 462.

<sup>8</sup> *Kanhaya Singh v. Nathu Singh*, XVIII U. D. 334=1937 R. D. 522.

<sup>9</sup> *Sheo Jatan v. Mukh Nath*, 6 R. and Cr. L. J. 334.

<sup>10</sup> *Dipan Rai v. Ram Khelawan*, 32 All. 383.

tenant thereof, but was trespasser in respect of any other plots of his former *sir* of which he resumed possession subsequently.<sup>1</sup>

If a person transferred what he does not own and undertook not to claim expropriatory rights he is liable to pay compensation for not making good his proprietary title.<sup>2</sup>

10. **Sir and khudkasht land.**—Expropriatory rights arise in respect of “his *sir* land, and the land which he has cultivated continuously for 3 years at the date of transfer.”

An expropriator cannot claim expropriatory rights over land which he gives to cultivate after parting with his proprietary rights.<sup>3</sup>

Three years mean calendar or agricultural years and not cultivating years.<sup>4</sup> In one case it was held that expropriatory rights do not arise necessarily in case of a land entered at a partition of 16 years' standing.<sup>5</sup>

The land must be *sir*, for meaning of which see section 6.

The right can be acquired only in respect of land, other than *sir*, which has been cultivated by him as landlord for 3 years, and not in land held as tenant. Where cultivation for the whole of the period has not been that of a landlord, such rights do not arise,<sup>6</sup> *e.g.* when part of the time cultivation was by a rent-free grantee who was subsequently declared to be an under-proprietor under section 107A, Oudh Act, the years counted only from the date of the declaration.<sup>7</sup>

A, a tenant buys the zamindari, and after a year, resells it. He cannot claim expropriatory rights in respect of the land which he cultivated as tenant before his purchase.<sup>8</sup>

Where the *khudkasht* is of less than 3 years' standing, no expropriatory rights arise, and the continued cultivation by the expropriator is as tenant,<sup>9</sup> or as of a person without consent.<sup>10</sup>

<sup>1</sup> *Babuni Singh v Ram Dut*, 4 Rev. and Cr. L. J. 205=III U. D. 233; *Chote Lal v. Lal Singh*, V U. D. 90

<sup>2</sup> *Aditya Prasad v Muhammad Mubarak Ali*, 21 O. C. 234=48 I. C. 257.

<sup>3</sup> *Gulab Singh v. Shab Lal*, 21 A. L. J. 331=V U. D. (II. C.) 173=4 L. R. Rev. 206=9 R. and Cr. L. J. 225=1923 R. C. 146.

<sup>4</sup> *Kedar Nath v. Ram Kumar*, 5 L. R. Rev. 216=VI U. D. 171.

<sup>5</sup> *Pheku Singh v. Debi Baksh*, IV U. D. 512=2 L. R. Rev. 216; *Ram Asra v. Bishun*, I U. D. 176=29 I. C. 559.

<sup>6</sup> *Misri Lal v. Jageshar*, IV U. D. 277=2 U. P. L. R. (B. R.) 86=6 Rev. and Cr. L. J. 273; *Ram Lagan Singh v. Ram Das Singh*, IV U. D. 23.

<sup>7</sup> *Fida Husain v. Kifayatullah*, XIII U. D. 134=13 L. R. Rev. 347, relying on 11 O. C. 187 and B. R. 11 of 1926.

<sup>8</sup> See *Lekhray Mul v. Nathu*, 29 I. C. 474=I U. D. 403=1 Rev. and Cr. L. J. 5; *Brij Nandan v. Phallu Ram*, 32 I. C. 387=I U. D. 393

<sup>9</sup> *Janq Bahadur v. Har Bilas*, B. R. 6 of 1923=9 Rev. and Cr. L. J. 320=1923 R. C. 450=V U. D. cxxvi=4 L. R. Rev. 430

<sup>10</sup> *Ram Saran Das v. Bindeshri*, 10 L. R. Rev. 114; *Jwala Debi v. Jas Singh*, B. R. 6 of 1933=14 L. R. Rev. 486=XIV U. D. (B. R.) 34; *Ram Jas v. Trilok*, XVII U. D. 196=1936 R. D. 258.

In a case of underpropriators in Oudh, exproprietary rights did not arise over all the land held by them as underpropriators though they had been decreed as *sir* in a claim for sub-settlement, but only over land which was really *sir*, and which they cultivated as *sir*.<sup>1</sup>

The purchaser is not entitled to take possession of *khudkasht* land (of less than 3 years) vacated by the vendor,<sup>2</sup> nor is the vendor entitled to retain possession of it.<sup>3</sup>

Where only a fraction of a joint estate is transferred the Board of Revenue insists on some sort of demarcation of the area over which exproprietary rights would arise by law before such rights can be claimed.

In *Muhammad Jawad v. Muhammad Sajjid*,<sup>4</sup> A sold his fractional zamindari share except a small area of *sir*-land. The other co-sharers and the transferee began to collect rents from the *shikmis* from the date of the sale and A continued in possession of the excepted *sir* area but did not claim exproprietary rights. He was held to have lost it after the period of limitation but the *sir* was ordered to be recorded as the joint *sir* of the other co-sharers and of A.

The fact that a Civil Court, after the decision of a competent Revenue Court that the area was still *sir*, has declared it to be ordinary *khalsa* land will not mend matters, so far as Revenue Courts are concerned.<sup>5</sup>

11. **Continuously**—*i.e.*, without a break. A mortgage, lease or theka, under which land X passes into the actual possession of the transferee, constitutes a break. The period of occupation by such transferee will not count, because the cultivation contemplated is personal to the proprietor.<sup>6</sup>

The period of cultivation prior to the mortgage, lease or theka, will be excluded, as such transfer broke the continuity. If A, the proprietor, continued to cultivate X during the subsistence of the mortgage, lease or theka, the question will be whether A continued to cultivate X as proprietor or as tenant; and for this purpose the terms of the transfer and the circumstances existing at its date have to be considered. The burden of proving continuous cultivation for 3 years lies on the person who claims exproprietary rights.<sup>7</sup>

<sup>1</sup> *Sri Ram Singh v. Kunj Behari Lal*, IV U. D. 443=7 R. and Cr. L. J. 269.

<sup>2</sup> *Ram Charan v. Gangoo*, III U. D. 183.

<sup>3</sup> *Ram Lagan Singh v. Ram Das Singh*, 1 L. R. A. (Rev.) 68=IV U. D. 23=2 U. P. L. R. (B R) 146; *Bishundhari Rai v. Sugar Rai* 2 L. R. Rev. 36=IV U. D. 527=7 R. and Cr. L. J. 101.

<sup>4</sup> III U. D. 350.

<sup>5</sup> *Muhammad Kazim v. Abu Jafar*, IV U. D. 476=2 L. R. Rev. 81.

<sup>6</sup> *Ganga Suhai v. Dwarka Singh*, 10 Rev. and Cr. L. J. 350.

<sup>7</sup> *Haridas v. Ghansham*, 6 All. 286.

12. **At the date of the transfer.**—Cultivation by the landlord must have extended to the date of the transfer and for 3 years before it i.e., the proprietor must have been cultivating the land as landlord at the date of the transfer and *continuously* for 3 years prior to such event. A Hindu widow made a gift of certain plots of land in her life and died in 1900. Her reversioners sued for their reversionary rights in 1913 and obtained a decree and possession from the Civil Court. In 1918, their interest was sold in execution of a decree. At the time they had been in possession of a certain plot for 13 years and claimed expropriatory rights in respect of it. This was disallowed as they were not in possession as landlords prior to 1913.<sup>1</sup> But compare *Chait Ram v. Hazari Lal*.<sup>2</sup> There, the donee remained in possession until the widow's death when the reversioner got into possession. It was held that he could not count the donee's possession to make up 12 years necessary for the acquisition of expropriatory rights in *khudkasht* land, though he would have been entitled to add the period of the widow's cultivation had she continued it to her death. A proprietor cultivates a plot X for 5 years, as *khudkasht*, then transfers his *zamin-dari* by mortgage or lease and continues to cultivate X as tenant for 12 years, then resumes his *zamindari*, and nine years after sells it. His cultivation during the mortgage or *theka* does not count as it was not as proprietor. The anterior cultivation of 5 years will be excluded as the mortgage or *theka* caused a break in the continuity of the cultivation as proprietor. Hence the subsequent period of nine years will not give him expropriatory rights over X.

13. **Subsection (2)** refers to the sale of the entire share of a co-sharer in a *mahal* or specific area therein. The words *so transfers* mean "by voluntary alienation otherwise than under the provisions of subsection (2) of section 9 explained in the notes to sub-section (1). *Such share* means the whole of his share in the *mahal* or specific area. *So transferred* means "transferred by foreclosure or sale in execution of a decree or order of a civil or revenue court," and explained in the notes to sub-section (1).

On such transfer, the landlord is declared to become an expropriatory tenant of *sir* and *khudkasht* as under sub-section (1).

*Joint sir* or *khudkasht* must be demarcated by the officer empowered to fix the rent under section 36, Land Revenue Act. If he does not so demarcate, expropriatory rights will not arise over the *sir* and *khudkasht* corresponding to the share of the transferor. This was the view of the Board of Revenue, which the legislature has endorsed, rejecting the contrary view of the High Court.<sup>3</sup>

The enactment is silent as to what would be the character or nature of the joint *sir* after the transfer, when expropriatory rights have not arisen. The High Court had in the case cited above held that the share of the

<sup>1</sup> *Kashi Praeud v. Oudh Behari*, IV U. D. 503=2 L. R. Rev. 208=4 U. P. L. R. (B. R.) 8.

<sup>2</sup> X U. D. 408.

<sup>3</sup> *Abu Jafar v. Muhammad Kasim*, 1930 A. L. J. 1413=1930 A. I. R. All. 657=XI U. D. (H. C.) 311=11 L. R. Rev. 270 T. A.—21.



transferor in the *sir* ceased to be *sir*. The Board of Revenue had held that the entire *sir* retained its character in the hands of the co-sharers other than the purchaser, if they are in possession.<sup>1</sup> If the vendor relinquished his exproprietary rights to the vendee, the latter did not take the *sir* as his severalty, because it had become *khalsa*<sup>2</sup> land of the whole body of co-sharers.<sup>3</sup> But if a co-sharer executes an usufructuary mortgage of specific plots of *sir* as head of the family which owned the joint *sir* and presumably for the benefit of the family and other co-sharers do not object, the latter are estopped from denying the transferee's rights.<sup>4</sup> *Sir* land belonged to *S* and *K*. *S* sold his proprietary rights in it to *K* and relinquished his exproprietary rights, but not in the number in dispute. In proceedings under section 36, Land Revenue Act, certain specific numbers, not including the one in dispute, were marked off as the *sir* of *S* who also acquired *K*'s interest by inheritance. The plot in dispute remained the *sir* of *K* and on his death passed to *S* with its cultivator as *sir* tenant.<sup>5</sup> The tenants of the transferor's *sir* did not become tenants-in-chief.<sup>6</sup> The purchaser did not acquire any right in the *sir*.<sup>7</sup> Even if he without demarcation took possession of a proportionate share of the *sir*, he was held to have taken as licensee from the co-sharers.<sup>8</sup> There were some rulings to the effect that if the purchaser entered into possession by collecting rents from each tenant of the *sir*, the vendor's share could be entered as his *khalsa*.<sup>9</sup> If the transfer was by way of usufructuary mortgage, it was held that the *sir* character of the mortgagor's share of the *sir* revived on redemption, the mortgagor although he had not claimed exproprietary rights on the mortgage,<sup>10</sup> but had retained possession of his *sir* by collecting rents from its tenants.<sup>11</sup> It was also ruled that in such a case the mortgagor was entitled to joint possession of the revived *sir*.<sup>12</sup>

<sup>1</sup> *Mahesh v. Hori Khan* B R 9 of 1918=III U. D. 18; *Muhammad Kizim v. Abu Jafar*, IV U. D. 476=2 L. R. Rev. 81; *Kanaiuldin v. Ramran Ali*, I U. D. 9, *Hanuman Rai v. Lillu*, XIV U. D. 299=14 L. R. Rev. 606; *Kalika Singh v. Dasdeo Singh*, 15 L. R. Rev. 111=XV U. D. 175; *Rikhi Singh v. Bajrangi Singh*, XVI U. D. 409; *Amrita v. Ram Nath Misra*, 1938 A. L. J. (B. R.) 108.

<sup>2</sup> *Gopi Singh v. Kesho Saran*, 1930 A. I. R. All. 459=122 I. C. 768.

<sup>3</sup> *Harkaran Singh v. Ghamna Singh*, VII U. D. 183=7 L. R. Rev. 314=1926 R. C. 391=12 R. and Cr. L. J. 253.

<sup>4</sup> *Amrita v. Ram Nath Misra*, 1938 A. L. J. (B. R.) 108.

<sup>5</sup> *Swarath Rai v. Ganga Bishun*, XIV U. D. 282=14 L. R. Rev. 504.

<sup>6</sup> *Ib.*

<sup>7</sup> *Sarda Prasad v. Zafaruddin*, IV U. D. 256=1 L. R. Rev. 131; *Balrup v. Son Kali*, V U. D. 245=9 R. and Cr. L. J. 44=1922 R. C. 406.

<sup>8</sup> *Udit Rai v. Tahlui Rai*, XV U. D. 21=15 L. R. Rev. 587=14 L. R. Rev. 888.

<sup>9</sup> *Sarda Prasad v. Zafaruddin*, IV U. D. 256, *Abdul Raoof v. Hajira*, IV U. D. 643.

<sup>10</sup> *Ram Kishore v. Jai Mangal*, 1926 A. I. R. All. 535=VII U. D. (II. C.) 150=7 L. R. Rev. 261=1926 R. C. 329.

<sup>11</sup> *Ib.*

<sup>12</sup> *Sykhru v. Ram Nath*, XIII U. D. 13.

Where a co-sharer in *sir* sold his interest to another co-sharer, and did not claim expropriatory rights, his *sir* became that of the vendee and not of all the co-sharers.<sup>1</sup>

Where a landlord of a share sold his proprietary interest along with proportionate area in each plot of *sir*, and the area was not demarcated, and he had never claimed expropriatory rights, the tenant of the *sir* was held to be a khalsa tenant.<sup>2</sup>

14 Sub-section (3).—It overrides the decision of the Board, *Khushali v. Bhika*,<sup>3</sup> and confirms that of the High Court in *Murlidhar v. Pemraj*,<sup>4</sup> so that sale of a part only of a proprietor's interest creates expropriatory tenancy in respect of so much of *sir* and *khudkasht* land as appertains or corresponds to such part of the interest.

If at the date of a mortgage *A* owned a certain share and cultivated a certain area *M* of *sir*, and subsequently acquired another share and added an area *N* to his *sir* cultivation, and the mortgagee proceeds to sell, expropriatory rights arise in *M* only and not in *N*.

This sub-section comprises cases in which the solo landlord of a mahal or specific area, or a landlord of a share therein transfers a portion of his interest, while retaining the rest. He will become expropriatory tenant of an area of the *sir* and *khudkasht* corresponding to the extent of the interest transferred, if that area is demarcated as in sub-section (2).<sup>5</sup> Without such demarcation, expropriatory rights will not arise, but the character of the land will be as indicated in note No. 13 *ante* on page 161. Where a sole landlord sold a fraction of his proprietary rights, it was held that the same fraction of the area of *sir* ceased to be *sir*, with the result that the tenant of *sir* became a khalsa tenant to that extent, and remained *sir* tenant as to the rest.<sup>6</sup> The owner of an anna share mortgaged with possession half of it, but there was no demarcation of half the *sir* area. It was held that he continued to hold the whole of the *sir* area as *sir*.<sup>7</sup> Where three out of four owners of a *sir* khata mortgaged certain plots in this khata with possession, but did not claim expropriatory rights, the entire *sir* of the khata was held to retain its character in the hands of the other co-sharers.<sup>8</sup>

15. Sub-section (4).—This sub-section should be kept in mind by the officer empowered to fix the rent of the expropriatory holding. He should ascertain whether the landlord is a *sir*-holder to whom section 16 (2) applies.

<sup>1</sup> *Muh. Zamirul Hasan Khan v. Muh. Masihul Zaman Khan*, XIV U. D. 172

<sup>2</sup> *Raghubansa v. Kunj Behari*, II U. D. 459

<sup>3</sup> B. R. 5 of 1888.

<sup>4</sup> 22 All. 205—20 A. W. N. 10

<sup>5</sup> Although an agreement giving less area was come to, *Bijai Singh v. Chunn Lal*, XVI U. D. 164—1935 A. W. R. 470.

<sup>6</sup> *Baldeo Prasad v. Chillu*, V U. D. 131—1922 R. C. 147

<sup>7</sup> *Nageshwar Shah v. Bhulai*, XVII U. D. 71—1936 R. D. 110.

<sup>8</sup> *Sheo Narain Rai v. Mahabir Rai*, II U. D. 171.

16. **Sub-section (5).**—The name “expropriary tenant” is conferred not only on those whose proprietary rights have been transferred on or after the 1st of January, 1902, but also on tenants having the same rights under the corresponding provisions of the two earlier Acts. This includes proprietors who lost or parted with their proprietary rights between the 22nd of December, 1873 and the 1st of January, 1902, provided that the right has not been extinguished by ejectment, surrender or abandonment, or by lapse of time. Where an expropriary tenant died before the commencement of this Act, the heirs who according to his personal law, as controlled by section 9 of the Rent Act, succeeded to his rights and became expropriary tenants, are now subject to the rights and liabilities imposed by this Act on such tenants. For instance if such an heir died after 1901, the succession to the tenancy was governed by section 22 of the Tenancy Act, 1901. In Oudh a tenant having a right of occupancy under section 25 of the Act of 1871 was called an expropriary tenant.

17. **Rent of expropriary tenant.**—As an usufructuary mortgage before 1902 did not give rise to expropriary rights, the mortgagee in such a case was bound to pay the rent agreed upon and could not claim reduction.<sup>1</sup>

An expropriary tenant has a right to hold at a rent calculated on certain fixed rates. Unless those fixed rates included provision for extra rent on the ground of sugarcane cultivation, his rent could not legally include such extra charge for sugarcane cultivation.<sup>2</sup>

An agreement to pay rent exceeding 87½ per cent. was invalid,<sup>3</sup> even though it has been agreed to under a contemporaneous lease of *theka*.<sup>4</sup>

Where in a suit for rent based on a compromise the defendant sets up the plea that the rent is in excess of that payable under section 14 of the Act of 1926, the plaintiff ought to have met that plea in the first court, and if he had not done so, he was not allowed in second appeal to urge that the rent fixed had not been shown to be in excess of what would be so payable.<sup>5</sup>

If a rent is fixed in a proceeding under section 36, Land Revenue Act it will be the rent payable although the rate may be in excess of or less

<sup>1</sup> *Sheolal v. Sukhdeo*, 31 All. 368=6 A. L. J. 6, 437.

<sup>2</sup> *Bishu Nath Jati v. Ram Lagan*, 1939 A. L. J. 617.

<sup>3</sup> *Prag v. Sital*, 36 All. 155=12 A. L. J. 136=22 I. C. 955; *Ram Kunwari v. Badri Singh*, B. R. 7 of 1913; *Dallo v. Chitaula*, 2 U. P. L. R. 8=58 I. C. 618=6 Rev. and Cr. L. J. 350=IV U. D. 2. An agreement settling the rent at less than the maximum is enforceable; *Nand Ram Singh v. Hari Saran Das*, 1925 A. I. R. All. 100=5 L. R. Rev. 235=82 I. C. 296=VI U. D. (H. C.) 239.

<sup>4</sup> *Moola Singh v. Amrit*, XV U. D. 158=16 L. R. Rev. 224.

<sup>5</sup> *Mansa Ram v. Ganga Ram*, 42 A. 334=2 U. P. L. R. (H. C.) 71=18 A. L. J. 282=IV U. D. 765.

than that indicated by the section and be the result of a *kabuliat* executed by the tenant,<sup>1</sup> or of a compromise, or of an agreement.<sup>2</sup>

Where expropriatory rent is fixed under section 36, Land Revenue Act, the tenant cannot, unless the proceedings under the section are set aside, sue under section 59 or section 61 for a declaration that the rent fixed was not in accordance with section 26.<sup>3</sup>

The rent payable by expropriatory tenants will be that determined in accordance with the provisions of Chapter VI relating to rate applicable to expropriatory tenants, as fixed by an officer empowered to act under section 36, Land Revenue Act. Section 101(1) says that the rates shall be calculated in the case of expropriatory tenants and of tenants holding on special terms in Oudh in accordance with rates which shall be two annas in the rupee less than the corresponding rates sanctioned for occupancy tenants.

As for Agra, section 110(3) enacts that in proposing rates for occupancy tenants, the rate officer shall have regard to the rates which he has proposed for hereditary tenants and also to the rent actually paid by occupancy tenants distinguishing between holdings of old and recent standing.

The proposed rates will have to be sanctioned by the Board, and the rates will be those so sanctioned. (*Vide* section 112).

Any agreement to pay at a higher rate will be illegal.

Under the earlier Acts, rates of rent of expropriatory tenants were 25 or 12½ per cent. less than those of non-occupancy tenants, and the rulings cited below relate to such rates.

A mortgaging co-sharer has to pay the rent agreed on as rent or if the *kabuliat* was for want of registration inadmissible in evidence as compensation for use and occupation.<sup>4</sup>

If on a sale of proprietary rights with possession over *sir*, the vendor covenanted that if he did not deliver possession of the *sir*, he would pay rent at a certain rate which was found to be fair, he was bound by the covenant, unless he could show that it was obtained by fraud or was contrary to law; and the fact that the vendee had not had the rent assessed in a Revenue Court did not disentitle him to a decree for rent at the rate mentioned in the sale-deed.<sup>5</sup>

The parties are not prevented either from contracting for the payment of a lower rate of rent or from coming to a conclusion as to what rent is likely to be fair and they may agree to pay the same.<sup>6</sup>

<sup>1</sup> *Har Prasad v. Khazan*, 18 A. L. J. 684, followed in *Musaddi Lal v. Chetu*, 5 L. R. Rev. 171=VI U. D. (H. C.) 109=1924 R. G. 69. The case was not followed later on the ground that section 3 of the Act of 1901, invalidating an agreement to pay more than the proper rent had not been cited. The court held that section 8 of the Act of 1926, made such an agreement void, *Suchit v. Baldeo*, 1937 A. L. J. 1284=1938 A. I. R. All. 74=1938 R. D. 47.

<sup>2</sup> *Krishna Datt Shukla v. Raji Ram Rai*, XIII U. D. 124=13 L. R. Rev. 295; *Mukta Prasad v. Bhup Singh*, 14 L. R. Rev. 288=XIV U. D. 127.

<sup>3</sup> *Anrudh Singh v. Megh Naram Singh*, XX U. D. 211=1939 R. D. 221.

<sup>4</sup> *Bukhtwar v. Lala Pat*, XVI U. D. 343.

<sup>5</sup> *Sheo Nandan v. Thakur Rai*, 6 A. L. J. 161=2 I. C. 51.

<sup>6</sup> *Sri Kantoo Singh v. Imdad Ali*, VI U. D. (H. C.) 85=5 L. R. Rev. 136=10 Rev. and Cr. L. J. 163.

The rate mentioned in Act II of 1901, *i. e.*, 75 per cent. was the rate when exproprietary rights arose before 7th September, 1926,<sup>1</sup> but if they arose subsequently, though in a partition proceeding started before the date of this Act, 87½ per cent. was the rate.<sup>2</sup>

The rate of rent is that generally payable by occupancy tenants and not the settlement rates.<sup>3</sup>

An agreement as to rent is not enforceable in itself but the court when fixing the rent under clause 5 may take the agreement into consideration.<sup>4</sup>

Private agreement fixing rent of exproprietary holding cannot stand against rent fixed under section 36, Land Revenue Act and a subterfuge evade the provisions of law will not be encouraged.<sup>5</sup>

When the rent is fixed by registered instrument (and not by court) and the tenant has been paying rent accordingly, he cannot suddenly in a suit for arrears claim exemption from payment because rent has not been fixed under section 36, Land Revenue Act. The fixed rent may be recovered if not proved to be excessive.<sup>6</sup>

If a portion is grove and the rest is denuded of trees, the latter area should be marked off and rent fixed on it.<sup>7</sup>

The fact that an expropriator has acquired rights under this section does not affect any other contractual obligation undertaken by him. *A*, a zamindar, usufructually mortgaged his zamindari share to *B*, and by a deed of even date took the lease of the mortgaged property from *B* for the period of the mortgage at a rent fixed. *B* sued *A* for arrears of rent and, in execution of the decree obtained, *A*'s equity of redemption was sold, *C* being the purchaser. *C* did not get his name registered. *B* sued *A* under the lease for arrears of rent that accrued due subsequent to the purchase by *C*. *A* denied his liability. It was held that though the auction-sale might have made him an exproprietary tenant, he was liable to pay rent even for the period subsequent to the sale of the equity of redemption.<sup>8</sup> The sale of the equity of redemption put an end to the relation of mortgagor and mortgagee between *A* and *B*. Though it did not extinguish the mortgage as against *C*, it had that effect so far as *A*

<sup>1</sup> *Mohan Singh v. Rup Ram*, X U. D. 172 ; *Gobind Prasad v. Sewa Ram*, XI U. D. 5 ; *Ahmad Sher Khan v. Latif Ahmad Khan*, 15 L. R. Rev. 615=XV U. D. 348, even when exproprietary rights arose on the occasion of an usufructuary mortgage made while Act II was in force and the sale took place after 7th September, 1926.

<sup>2</sup> *Chuttan Singh v. Durga*, X U. D. 172.

<sup>3</sup> *Munaf Singh v. Rudhey Lal*, 11 L. R. Rev. 5=XI U. D. 31.

<sup>4</sup> *Jahangira v. Karar Singh*, 16 A. L. J. 212=3 Rev. and Cr. L. J. 120 ; *Lakshmi Chand v. Liladhar*, 11 Rev. and Cr. L. J. 141=6 L. R. Rev. 111.

<sup>5</sup> *Nabiullah v. Lachmi Prasad*, 1939 R. D. 298.

<sup>6</sup> *Data Ram v. Jhaoo Lal*, 1936 A. I. R. All. 200=XVI U. D. 563=1935 R. D. 442.

<sup>7</sup> *Mohan Singh v. Rup Ram*, X U. D. 172=13 R. D. 775.

<sup>8</sup> *Mithan Lal v. Chajoo Singh*, 40 All. 429=4 Rev. and Cr. L. J. 153.

was concerned. The learned judges got over this by observing that the termination of the mortgage and therefore of the lease was not pleaded, and if pleaded it would have raised a question of fact. The extinction of the mortgage and of the lease so far as *A* was concerned could have been deduced as a matter of law, and also from the terms of the mortgage-deed.

The rent fixed becomes payable from the date when the expropriatory tenancy arose,<sup>1</sup> though only three years' arrears are recoverable.

Compare with this the following :—

*A* made a gift of his *sir* to *B* subject to the charge of his paying the profits thereof to *C* as maintenance allowance. The land gifted was sold by auction to *D* and *B* became the expropriatory tenant thereof and was no longer liable to pay the profits of the land to *C*. *D* became liable for it but only to the extent of the rent fixed on the expropriatory tenant *B*, and not for what *B* realises from sub-tenants.<sup>2</sup>

18. Sub-section (6).—A possessory mortgage gives rise to expropriatory rights. This has been dealt with in note 4 *ante* on page 138.

19. Sub-section (7).—Public purposes include land acquired under the Land Acquisition Act.

20. Sub-section (8).—This has already been dealt with in note No. 2 on page 137.

21. Sub-section (9).—Grove land.—The sub-section makes clear that expropriatory tenancy does not arise in groveland though the grove was planted on *sir*. This overrides many cases to the contrary.<sup>3</sup> As to the rights regarding the trees, a High Court ruling under the Act of 1881 considered him to be the expropriatory tenant in respect of the trees also.<sup>4</sup> This view was reaffirmed by a single judge in later cases.<sup>5</sup> The same learned judge in a later case ruled that expropriatory rights did not attach to the grove (presumably meaning the clusters of trees) though they did to the groveland, and hence the trees passed to the purchaser.<sup>6</sup> A three judge decision would keep the trees with the transferor.<sup>7</sup> The Board of Revenue is perhaps, inclined to go further.

<sup>1</sup> *Bhan Pertab Sahai v. Sheodat Bahadur Singh*, 15 O. C. 45; *Hardeo Baksh Singh v. Sri Pragash Singh*, 12 O. C. 35.

<sup>2</sup> *Akbar Husain v. Husain Jahan*, 1935 A. I. R. Oudh 309=XVI U. D. 256=1935 O. W. N. 437=1935 R. D. 41=155 I. C. 40.

<sup>3</sup> *Hafizan v. Chokhoo Lal*, VIII U. D. (H. C.) 131=1927 R. C. 123; *Manmohan Singh v. Mukat Manohar*, XI U. D. 214; *Nand Ram v. Chedi Lal*, IX U. D. (H. C.) 66=9 L. R. Rev. 113 relying on *Chandra Lal Singh v. Bhagwan Singh*, 29 O. C. 123 and other cases cited below.

<sup>4</sup> *Jugal v. Deoki*, 9 All. 38=6 A. W. N. 320.

<sup>5</sup> *Hafizan v. Chokhoo Lal*, VIII U. D. (H. C.) 131=8 L. R. Rev. 132=1927 R. C. 123; *Deesa v. Dhuni Singh*, XVI U. D. 112=1935 R. D. 73, 453=154 I. C. 931.

<sup>6</sup> *Yakub Ali v. Tajammul Husam Khan*, 1932 A. I. R. All. 653=1933 A. L. J. 1289=XIII U. D. (H. C.) 18(=13 L. R. Rev. 38).

<sup>7</sup> *Fisrat Husain v. Liaqat Ali*, 1939 A. L. J. 281 (F. B.)=1939 All. 518=1939 R. D. 189=7 A. L. R. All. 291.

It has held that where a grove is planted on *sir* and the grove with the land and the trees is sold, the *sir*-rights are lost by the sale of the land and the grove rights by sale of the trees, and hence no exproprietary rights can be claimed with regard to the trees or to the grove so long as the grove exists in such a condition as to exclude cultivation.<sup>1</sup>

The Board reviewed the matter at some length in *Naim Chond v. Mal Khan*,<sup>2</sup> and came to the following conclusion :— (1) where a *sir*-holder is in possession of the grove standing on his *sir*, after the sale of his proprietary rights he becomes the exproprietary tenant of the trees ; (2) when the *sir*-holder has transferred the property in the trees before parting with his proprietary rights, he cannot become the exproprietary tenant of the trees ; (3) where the property in the trees purports vaguely to be transferred at auction along with proprietary rights, his exproprietary rights in the trees exist ; and (4) when the property in the trees is transferred at auction sale at the expropriator's wish or with the consent of the proprietor along with the proprietary rights he cannot claim exproprietary rights in the trees.

In *Har Saran Das v. Harbans Singh*,<sup>3</sup> it was held that where a grove existed on *sir* land, the *sir* retained its character under the Land Revenue Act, and on the proprietary rights being sold, the erstwhile owner became the exproprietary tenant ; and if he sold his rights in the grove, the purchaser could cut the trees. A more exproprietary tenant could not cut down trees on his holding. An expropriator who retained grove on land, which was his *sir*, had therefore the right of a groveholder to sell and cut trees. The real point argued was that the purchaser could not cut the trees, and this was negatived, with the necessary implication that the expropriator became a groveholder, and had full rights of ownership over the trees.

The Board affirmed the view that exproprietary rights exist over *sir* land which was planted over with a grove. No question of the rights over the trees was raised.<sup>4</sup> In one case (before the Act of 1926) the Board ruled that the expropriator did not, by becoming an exproprietary tenant, lose his rights to dispose of the trees.<sup>5</sup>

<sup>1</sup> *Saful Hasnain v. Chandra Devi*, 14 L. R. Rev. 714=XIV U. D. 382 ; *Murtaza Begam v. Hoshier Singh*, XVI U. D. 593 ; *Murari Lal v. Joti Prasad*, XVII U. D. 52=1936 R. D. 87 ; *Bishambhar Sahai v. Rati Ram*, XVI U. D. 336=1936 R. D. 480.

<sup>2</sup> VII U. D. 39=1936 R. D. 493.

<sup>3</sup> 1930 A. L. J. 248=1930 A. I. R. All. 655=XI U. D. (H. C.) 260=11 L. R. Rev. 236.

<sup>4</sup> *Murari Lal v. Amar Nath*, XIV U. D. 413=14 L. R. Rev. 806 ; *Lachmi Narain v. Jat Kishan*, III U. D. 159 ; *Hait Ram v. Khuda Baksh*, IV U. D. 670 ; *Basant Kumari v. Suraj Din*, XIV U. D. 354 ; *Manmohan Singh v. Mukat Munohar*, XI U. D. 214 ; *Ilahi Khan v. Baij Nath*, II U. D. 413.

<sup>5</sup> *Jhamola Koer v. Mujibunnissa*, II U. D. 266.

22. When right can be acquired independently of section 26. It cannot be acquired by prescription under Art. 144, Limitation Act.<sup>1</sup>

On the principle of the rulings in 22 I. C. 124, 29 I. C. 677, B. R. 16 of 1913, it may be acquired by estoppel,<sup>2</sup> but not if admission of the tenancy was made under a misapprehension of facts,<sup>3</sup> or by mistake, *e. g.*, inclusion of the plot in rent suits which was never part of the expropriatory holding<sup>4</sup> or by a person not authorised to act in the manner, *e. g.*, a receiver in the insolvency of a zamindar.<sup>5</sup>

27. Subject to the provisions of section 82, no agreement for the relinquishment or having the effect of a relinquishment of expropriatory rights shall be enforceable in any court whether such agreement was entered into before or after such expropriatory rights accrued.

Corresponds to section 15 of the Agra Tenancy Act of 1926, and section 7-A(5) of the Oudh Rent Act of 1886.

Subject to the provisions of section 82—Under that section a tenant bound by a lease or agreement for a fixed period cannot surrender before the expiration of that period, and a tenant not so bound may surrender at the end of any agricultural year, and no tenant can surrender a part of his holding save in alluvial tracts in certain cases, and without giving up possession; and an expropriatory tenant cannot surrender any part before the expiry of three years or six months from the date of accrual of the expropriatory rights. As the words stand, it is not easy to see the particular provisions of section 82 to which the section is subject. Probably, it only means that an agreement to surrender may be made after and not before the lapse of three years or six months from the accrual of the expropriatory rights. If so, the words "subject to the provisions of section 82" are really superfluous in view of the existence of the proviso to section 82(1), but have been put in to avoid a possible conflict.

<sup>1</sup> *Basdeo v. Ulfat Rai*, 37 All. 22=12 A. L. J. 1153=26 I. C. 21; *Paras Ram v. Raj Kumar Singh*, 1929 A. L. J. 549=13 R. D. 214=117 I. C. 620.

<sup>2</sup> *Bisheswar Das v. Sagher-un-nisa*, 1 U. D. 55=32 I. C. 902; *Jahani v. Mathura Prasad*, 11 U. D. 263=3 R. and Cr. L. J. 152; *Drig Bijai Narain Singh v. Mahadeo Prasad*, 11 U. D. 400; *Ram Chandra Singh v. Sheoraj Singh*, 1 L. R. Rev. 14=III U. D. 645; *Mithan Singh v. Rup Ram*, 11 L. R. Rev. 229.

<sup>3</sup> *Sarju Ram v. Bharosa*, 1923 R. C. 543=VI U. D. 36; *Lachhi v. Bhawan Prasad*, 3 L. R. Rev. 8=VIII U. D. 1.

<sup>4</sup> *Ganpat Rai v. Raghubir Singh*, XII U. D. 220=12 L. R. Rev. 326.

<sup>5</sup> *Hira Singh v. Wahidulla*, B. R. 13 of 1925=VI U. D. civ. 1=1925 R. C. 506.



**28.** Every tenant, who is not a fixed-rate tenant or an exproprietary tenant and who, at the commencement of this Act, has acquired a right of occupancy under the Agra Tenancy Act, 1926, or any previous enactment relating to Agra, or under the Oudh Rent Act, 1886, shall be called an occupancy tenant, and shall have the rights and be subject to the liabilities conferred and imposed on occupancy tenants by this Act.

**1.** **Occupancy tenant.** Note that exproprietary tenants are made a class apart from occupancy tenants, and that the word *all* before "the rights" and "the liabilities" in section 16 Agra Act has been omitted. Under the Agra Act, occupancy tenancy could have been acquired by 12 years prescription prior to 7th September, 1926 or under section 16 by conferral or by tenancy of Government estates (except in Bundelkhand) other than *nazul* land. Estoppel also gave rise to freedom from ejectment and created rights similar to occupancy rights. Acquisition by 12 years' occupation and estoppel is dealt with in a separate note in the Appendix.

**2.** Under the Agra Tenancy Act of 1926 sections 16 and 17 regulated the conferral and acquisition of occupancy rights. They were :—

**16.** Every tenant, who at the commencement of this Act has acquired a right of occupancy under the Agra Tenancy Act, 1901, or under any previous Act, and

every person on whom a right of occupancy is conferred in accordance with the provisions of section 17 of this Act, and

every person (except in Bundelkhand) who is at or after the commencement of this Act a tenant of government estates other than *nazul* land,

shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act.

**Except in Bundelkhand**—The meaning of this paragraph as to land in Bundelkhand is not clear. Probably it means that occupancy rights cannot be acquired by a tenant of Government estates in Bundelkhand.

**Government estates** meant estates under the sole control of the Local Government and not of the Government of India. Hence an area administered by the latter was not a Government estate and no occupancy rights accrued in it.<sup>1</sup> If the special manager of Government estates provisionally sanctioned a lease but the Collector did not sanction it, the lessee was not admitted to the tenancy.<sup>2</sup>

<sup>1</sup> *Jagrup Singh v. Harnarain Misra*, XI U. D. 25—10 L. R. Rev. 226.

<sup>2</sup> *Abdul Majid v. Raj Kali*, XVI U. D. 109.

17. (1) The following persons shall be competent to confer a right of occupancy:—

Conferment of right of occupancy.

- (a) a landlord or a permanent tenuro-holder ;
- (b) a lambardar, with the written concurrence of all co-sharers whom he represents, and, if any co-sharer is a minor, or otherwise unable to act, with the sanction of the district judge obtained on the application of the natural or certified guardian of such co-sharer ;
- (c) a mortgagee in possession, with the written concurrence of the mortgagor ;
- (d) a mortgagor in possession, with the written concurrence of the mortgagee, or with the sanction of the district judge ;
- (e) a person whose proprietary interest is the subject of litigation in a court of law, with the authority of the court ;
- (f) the natural certificated guardian of a minor proprietor or the manager of a lunatic's estate, with the sanction of the district judge ;
- (g) the manager of a joint Hindu family with the written consent of the members of the family who have obtained majority and, where any of the members of the family is a minor with the sanction of the district judge :

Provided that, if the minor has a father or a brother as his natural guardian, the written consent of the natural guardian shall be deemed sufficient.

- (h) a thekadar in accordance with the provisions of section 201 (2) ;
- (i) the court of wards in land under its superintendence ;
- (j) a Hindu woman having a limited estate, with the written consent of the nearest reversioner or the sanction of the district judge.

(2) A right of occupancy may be conferred—

- (a) upon a tenant in his holding or in any part thereof,
- (b) upon any person in land in which no tenancy subsists,
- (c) upon any person in land in which a tenancy exists, with effect from the date of the extinction of the tenancy.

(3) Notwithstanding anything in the foregoing sub-sections, a right of occupancy shall not be conferred in grove-land or pasture-land, or upon a corporation, muth or other artificial person.

(4) A right of occupancy may be conferred for valuable consideration or gifted, provided that such a right shall not be conferred in land under the superintendence of the court of wards except for valuable consideration, and that the court of wards shall not delegate its powers to confer such rights.

(5) A right of occupancy shall be conferred by registered instrument only.

(6) Notwithstanding the provisions of section 50, the initial rent payable by a tenant upon conferment on him of a right of occupancy shall be the rent which is agreed upon between him and his landlord.

A proprietor whose land was under attachment could not confer occupancy rights<sup>1</sup> nor could a landlord whose land was under a theka confer occupancy rights on a person or recognise him as the heir of an occupancy tenant,<sup>2</sup> nor could the trustee or manager of property endowed to an idol<sup>3</sup> A zamindar fictitiously conferring occupancy rights on his wife did not affect the status of the actual tenant.<sup>4</sup> A gift of a holding otherwise than in accordance with section 17 conferred no *locus standi* on the donee after the death of the donor, even if the gift has been accepted by the landlord for a *nazrana*.<sup>5</sup> In a joint undivided khewat the landlord is the whole proprietary body ; hence a plot proprietor of land in a joint khewat could not confer occupancy rights, even as consideration for the surrender of a part of a holding by the executant of the deed of surrender, his remedy being against the plot proprietor under section 18(5).<sup>6</sup>

Nor could a lambardar as sole collector of rent confer occupancy rights in a village where the system was that every co-sharer was entitled to collect rent according to his share from tenants.<sup>7</sup> A landholder is not a landlord unless he has proprietary interest also.<sup>8</sup> Power to confer occupancy rights could not be delegated to an agent.<sup>9</sup>

**Consent.**—A conferral or grant of occupancy rights without the necessary consent will be inoperative, and the grantee was no better than a trespasser.<sup>10</sup> An agreement to admit to occupancy tenancy by a lambardar who had no authority to confer occupancy right was illegal and void.<sup>11</sup>

**Sanction of the District Judge.**—Had the Judge any discretion in the matter ? It is submitted that he had to perform a function similar to that which he had under the Guardian and Wards Act or Lunacy Act in sanctioning transfers of property. Under cl. (b) the

<sup>1</sup> *Hanuman Prasad v. Habib Hasan*, X U. D. 67.

<sup>2</sup> *Kishan Pal Singh v. Narain*, 12 L. R. Rev. 421.

<sup>3</sup> *Ramkumar v. Sri Hanumanji*, B. R. 3 of 1933=XIV U. D. (B. R.) 25=14 L. R. Rev. 353 (even statutory rights are not conferred).

<sup>4</sup> *Abdul Rahman v. Sunder Debi*, XVI U. D. 540=1935 R. D. 428.

<sup>5</sup> *Ram Raj v. Deo Saran*, XIV U. D. 152=14 L. R. Rev. 333.

<sup>6</sup> *Shib Chandar v. Rama Chandar*, XVIII U. D. 29=1937 R. D. 46.

<sup>7</sup> *Sarla Bur Singh v. Wazir Jolaha*, XVIII U. D. 68=1937 R. D. 71.

<sup>8</sup> *Achar Singh v. Chanderi*, XV U. D. 510.

<sup>9</sup> *Ib.*

<sup>10</sup> *Sheo Narain v. Darshan*, XVI U. D. 523.

<sup>11</sup> *Shiva Narain v. Kali Charan*, XVI U. D. 456=1935 R. D. 375.

sanction must be applied for by the natural or certificated guardian of a minor co-sharer.

The admission by the lambardar of a person as joint in tenancy with a female heiress did not extend to such person the occupancy rights of the female, which were good only for her life.<sup>1</sup>

Sanction of the District Judge was or might be necessary under clauses (b), (d), (f), (g) and (j). Clauses (b) and (f) must be kept apart, the first relating to the action of a lambardar representing several co-sharers, one or some of whom was or were minor or minors, and the second to a minor who was the sole proprietor of an estate. In cl. (d) the mortgagee's consent should be sought first and if that was impossible or unobtainable, the District Judge should have been approached for his sanction. That officer had to consider the propriety or otherwise of according sanction. Where a co-sharer in a joint khewat had transferred his share by simple mortgage (under which the property was sold and purchased by the mortgagee) the mortgagor could not confer occupancy rights while the mortgage was in operation.<sup>2</sup> In clauses (g) and (j) the natural guardian or reversioner should be asked for sanction in the first instance.

A District Judge would not ordinarily grant sanction unless the conferral of occupancy rights would be for the benefit of the minor or his estate; and would hesitate long where no valuable consideration has been paid for the privilege.

Similar remarks apply to a case under clause (e) where a court was asked to exercise its authority in favour of a grant of occupancy rights.

A document conferring occupancy rights executed by the owner whose property was the subject of a suit to enforce a mortgage on it, which was not registered according to law, and was executed without the consent required by cl. (e), was invalid.

Under clause (g) a father or a brother who was the natural guardian of a minor might consent to a grant under the section. A natural guardian could consent only in the interest of the minor or of his estate, and, generally, not to a gift. In fact, in the case of a Muhammedan the powers of such a guardian have been pronounced by the Privy Council to be very limited indeed, even where consideration has passed for a transfer.

A and B, two zamindars, created for substantial consideration occupancy rights in their *sir*-land in favour of C, a minor, and made a surrender of their *sir* rights. Then they sold their zamindari to C's father. About 21 months after the creation of occupancy rights and 15 months after the sale, A sued to have the lease in favour of C set aside on the ground that it was inoperative as he had two adult sons who had not agreed to it in writing, and to have expropriatory rent fixed over

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<sup>1</sup> *Kumil v. Samcal Singh*, XIX U. D. 671=1938 R. D. 114.

<sup>2</sup> *Kishori Lal v. Kashi Ram*, XVIII U. D. 199=1937 R. D. 255.

the *sir*. Needless to say that the suit was defeated as more than 6 months had elapsed after the accrual of exproprietary rights on the sale. The suit might also have been defended under cl. (a).<sup>1</sup>

Under clause (j), the consent must be of the nearest reversioner, i. e., of the person who would take the estate if the widow were to die at once; and of all the nearest reversioners, if the number exceeded one. Was consent to a gift to be binding on the reversion?

**Sub-section (2).**—Land which was the subject of a subsisting tenancy could not be granted in occupancy tenure to a person who was not the tenant,<sup>2</sup> for instance, if *sir* had become by operation of law subject to exproprietary rights, the vendor could not confer occupancy rights therein on relations of the vendee.<sup>3</sup>

**Sub-section (3).**—Grove-land or pasture-land could not form the subject of an occupancy grant; nor could such a grant be made to an artificial person.<sup>4</sup>

**Sub-section (4).**—A Court of Wards could confer occupancy rights only for valuable consideration and could not delegate its powers in this respect, e. g., to the Collector or the Special Manager. See *Achaibar Singh v. Dhan Dei*.<sup>5</sup>

**Sub-section (5).**—A registered instrument is absolutely essential. Admission of status in court was not enough.<sup>6</sup>

In this connection section 18 of the Act of 1926 may also be cited.

**18.** (1) A person on whom a right of occupancy has been conferred under the provisions of section 17 may present an application to be recorded as an occupancy tenant to the court of the assistant collector in charge of the sub division, and shall verify such application in the presence of the court.

(2) Subject to the provisions of sub-sections (3) and (4), the court, after giving notice to the person who is alleged to have conferred the right of occupancy and satisfying itself that such a right has been conferred in accordance with the provisions of section 17, shall cause the applicant to be recorded as an occupancy tenant in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901. If the court is not satisfied as aforesaid it shall, subject to the provisions of sub-sections (3) and (4), reject the application.

(3) When in proceedings under this section a question arises whether the person purporting to have conferred the right of occupancy was

<sup>1</sup> *Natthu Singh v. Jagdish Saran*, 13 L. R. Rev. 174=XIII U. D. 102.

<sup>2</sup> *Kashi Sahu v. Muh. Jamil Ullah*, XII U. D. 137.

<sup>3</sup> *Kallu Pande v. Kuber Pande*, XII U. D. 343.

<sup>4</sup> This gives effect to the cases decided prior to 7th September, 1926, and overrides *Parmanand v. Ramnand*, 35 All. 474.

<sup>5</sup> XV U. D. 510.

<sup>6</sup> *Mula v. Secy. of State*, XVI U. D. 477=1935 B. D. 407.

competent to do so, the court shall, if a question of proprietary right is in dispute and has not already been determined by a court of competent jurisdiction, require by an order in writing the party whose name is not recorded as proprietor of the land in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901, to institute within two months a suit in the civil court for the determination of such question of proprietary right. Where the names of all parties to the dispute about the question of proprietary right are recorded in the aforesaid registers, the court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only. The civil court, after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding on that issue to the court of the assistant collector in charge of the sub-division who shall accept the finding of the civil court on the issue referred to it.

(4) Where an order has been passed under sub-section (3), if the party whose name is not recorded in the aforesaid annual registers fails to comply with it, the court of the assistant collector, in charge of the sub-division shall decide such question of proprietary right against him. If such party institutes a suit in compliance with the order, the court of the assistant collector in charge of the sub-division shall dispose of the application pending before it under sub-section (2) in accordance with the final decision of the civil court of first instance or appeal, as the case may be, upon such question of proprietary right.

(5) Where the court of the assistant collector in charge of the sub-division rejects an application under this section, it may (after taking into consideration the decision of the civil court, if any) award to the applicant such damages (including the return of the consideration, if any, paid by the applicant to the person purporting to have conferred the right of occupancy) as it may deem just.

(6) The court of the assistant collector in charge of the sub-division or the civil court may, either of its own motion or on the application of any person, direct that any person be made a party to the proceedings, but nothing in this section shall debar a person who has not been a party to such proceedings from establishing any right in any civil or revenue court.

(7) An appeal against an order of the court of the assistant collector in charge of the sub-division under this section shall lie to the commissioner, provided that if a question of proprietary right has been in issue between parties claiming such right in the court of first instance and is in issue in the appeal the appeal shall lie to the court which has jurisdiction to hear appeals from the court in which the question of proprietary right was decided.

(8) Notwithstanding anything in section 14, where a landlord or permanent tenure-holder has conferred a right of occupancy under section 17 in land which is his *sic* the following consequences shall ensue if the right of occupancy is still subsisting at the time of a transfer

which under the provisions of section 14 would ordinarily cause the accrual of expropriatory rights :—

(a) If the transfer is by mortgage, expropriatory rights shall not accrue unless and until the right of occupancy is extinguished.

(b) If the transfer is by foreclosure or sale, no expropriatory rights shall accrue.

3. Under the Oudh Act, sections 5 and 6 regulated the accrual of occupancy rights. They were :—

5. Tenants who have lost all proprietary right whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for those lands according to the provisions of this Act, have a right of occupancy under the following rule :—

Every such tenant who, within thirty years next before the thirteenth day of February, 1856, has been, either by himself, or by himself and some other person from whom he has inherited, in possession as proprietor in a village or estate, shall be deemed to possess a heritable but not a transferable right of occupancy in the land which he cultivated or held in such village or estate on the twenty-fourth day of August, 1866 : provided that such land has not come into his occupation, or the occupation of the person from whom he has inherited for the first time since the said thirteenth day of February, 1856 : provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right.

Nothing contained in the former part of this section shall affect the terms of any agreement in writing entered into between a landlord and tenant after the twenty-second day of July, 1868.

**Tenants, every such tenant.** Those words show that the person indicated must have been a tenant when the Rent Act came into force, and, since this section repeats the words of section 5 of the Rent Act of 1868, he must have been a tenant on the 22nd of July, 1868. That is, he must have been occupying the land over which the right is claimed as a tenant on that date and not as a proprietor.

**Who have lost all proprietary right.** A temporary mortgage was not losing.<sup>1</sup>

**Whether superior or subordinate.** Does the word subordinate mean the same thing as under-proprietory ? Or does it mean an inferior proprietor ?

In *Baiju v. Tribhuan Dat*, Rent Act Ruling No. 49, it was held to apply to under-proprietory rights. So in *Jagdeo Singh v. Kuram Ali*.<sup>2</sup>

<sup>1</sup> *Suraj Baksh v. Bhagwan Das*, B. R. 7 of 1903 ; *Muta Prasad v. Sheoraj Kuar*, 29 I. C. 401—I U. D. 404. It was held that the mortgage becoming irredeemable by sale of the right of redemption to the mortgagee in 1868, loss of all proprietary rights must be deemed to have taken place at the date of the mortgage, *Debi Singh v. Bhaiya Ambika Dat Ram*, B. R. 4 of 1912—III U. D. 436.

<sup>2</sup> II U. D. 622.

**Second paragraph.**—Throo conditions were essential—the person claiming occupancy rights (a) must have been in possession as proprietor in the village or estate between the 13th of February, 1826, and the 13th of February, 1856, and (b) must have held or cultivated the land over which occupancy rights were claimed on 24th August, 1866, but (c), the occupation of such land must have commenced on or before 13th February, 1856.

As to (a), the expression “has been” leaves it doubtful whether he should have been in possession as proprietor all the thirty years, expiring on 13th February, 1856 or at any rate, for any period short of thirty years, but on 13th February, 1856, in which case the loss of proprietary rights must have occurred after 13th February, 1856, or whether he need have been a proprietor at any time during those thirty years, in which case the loss of proprietary rights must have occurred before 13th February, 1856.

As to (b) This left it doubtful whether the loss of proprietary rights must have occurred before 24th August, 1866, the date on which rules as to occupancy rights were approved by Government, or might have occurred any time thereafter to 22nd July, 1868.

The paragraph might therefore contemplate any of the following classes of persons :—

(i) Persons who were proprietors all the time between 13th February, 1826 and 13th February, 1856, or who were in possession as proprietors just before or on 13th February, 1856, the date of annexation of Oudh, and

(a) who lost their proprietary possession between 13th February, 1856 and 24th August, 1866.

or (b) who lost their proprietary possession on or after 24th August, 1866 and before 22nd July, 1868.

(ii) Persons who were in possession at any time during the 30 years ending on 13th February, 1856 and who lost their proprietary possession before 13th February, 1856.

The Board's decision in *Debi Singh v. Bhaiya Ambika Dat*,<sup>1</sup> shows that (ii) is not excluded. There, on account of a usufructuary mortgage, the owners of a mauza lost proprietary possession of it in 1852. Their equity of redemption was sold in 1868, but whether before or after 22nd July, 1868, it did not appear. It was argued that since the owners did not lose their equity of redemption until 1868, section 5 was inapplicable. This contention was negatived by Baillie, S. M., who observed that the proprietary rights must be deemed to have been lost in 1852. This is, of course, wrong. The proprietary rights remained up to 1868, but proprietary possession was lost in 1852. The learned member relied on Rent Act Ruling No. 4 in which it was held that a proprietor who

<sup>1</sup> B. R. 4 of 1912.



mortgaged his rights in land and who lost all his proprietary rights on the mortgage becoming irredeemable (mortgagor's rights being confiscated) had a claim to a right of occupancy.

In *Mata Prasad v. Sheoraj Kuar*,<sup>1</sup> it was held that a loss after 22nd July, 1868 was certainly not within the second paragraph, and a loss after 24th August, 1866 was probably also not within the same. In this case an usufructuary mortgage was made in 1855, and the equity of redemption was foreclosed in 1858. Occupancy rights were held to have accrued on the foreclosure.

In *Kali Din v. Kamta Singh*,<sup>2</sup> a loss in 1829 was held to be within the paragraph. In this case the date of the mortgage was not given but it appeared to have been made some sixty years before 1829, when the equity of redemption became extinguished by lapse of time. The Board ruled that the mortgagee's possession up to 1829 was the mortgagor's possession within the meaning of the second paragraph of the section.

In 5 O. C., 178, followed in 8 O. C., 353, it was held that the loss must have taken place before 24th August, 1866. In *Gokul v. Sheo Shankar Lal*,<sup>3</sup> persons who were proprietors when the Rent Act, 1868, was passed were denied the capacity of acquiring occupancy rights.

In *Payag Singh v. Manohar Lal*,<sup>4</sup> a single Judge of the Chief Court held that in order to get occupancy rights under section 5, a claimant must establish (1) that he had lost all proprietary rights whether superior or subordinate, in the land of which he was in cultivation at the date of the claim, (2) that he had been in possession either by himself or through some other person from whom he had inherited it, as proprietor, within 30 years next before 13th February, 1856, (3) that he was in possession of that land on 24th August, 1866, and (4) that the land had not come into his possession or of the person from whom he had inherited for the first time since 13th February, 1866, and that the section did not anywhere lay down any condition to the effect that the proprietary rights must have been lost within the specified period of 30 years, *i. e.*, between 13th February, 1826 and 13th February, 1856. The section only insisted that a claimant must show that he or his ancestors were in possession of the village in which the lands in suit were situate as proprietors within the said period. It may have been that the proprietary rights had been lost within the period or after that period, but so long as the claimant could establish that he had lost his proprietary rights before 24th August, 1866 and had become a tenant of those lands before that date, he satisfied the conditions laid down in section 5. The learned Judge then ruled that where it had been clearly established that the ancestors of the claimant were at no time the proprietors of the village, their occupancy rights could not be considered to have been established.<sup>5</sup>

<sup>1</sup> 1 U. D. 404.

<sup>2</sup> 11 U. D. 505.

<sup>3</sup> 11 O. L. J. 395=5 L. R. Rev. 73 (O.)=VI U. D. 90=1924 R. C. 62.

<sup>4</sup> 1928 A. I. R. Oudh 369=IX U. D. (H. C.) 223=10 L. R. Rev. 78=5 O. W. N. 622=12 R. D. 353=111 I. C. 465.

<sup>5</sup> This seems also to have been the view of two Judges in *Mahabir Bux Singh v. Sitla Bux Singh*, 3 Luck 167=1928 A. I. R. Oudh 152=X U. D. (H. C.) 44=10 L. R. Rev. 15=4 O. W. N. 1255.

This case was followed by the Board of Revenue in *Tajammul Husain v. Rao Ragho Indra Pratab Singh*,<sup>1</sup> in which the four conditions mentioned above were affirmed and were said to exist.

The distinction between possession as proprietor and proprietary right, which is apparent on comparing the first two paragraphs, is of importance. Possession as proprietor must have been as indicated in the second paragraph. Such possession may be lost by granting a usufructuary mortgage; but the proprietary rights of the mortgagor remain until the right of redemption is extinguished by act of parties or operation of law.

The section therefore contemplated (1) loss of possession as proprietor, and (2) loss of proprietary right, superior or subordinate. Loss of possession as proprietor may have taken place at any time after 14th February, 1826 and before 14th February, 1866, and the loss of proprietary right at any time up to 22nd July, 1868. B. R. 4 of 1912 is some authority for the view that the loss of proprietary right may have taken place even after 22nd July, 1868.

In *Suraj Baksh v. Dep.-Com.*,<sup>2</sup> it was laid down that those persons only could be held entitled to the occupancy right recognised by the section who had (a) occupied the land in question before 13th February, 1856, and (b) been in possession, as proprietors, of the particular village or estate in which the land was situate at some time between 14th February, 1826 and 13th February, 1856. As regards proprietors admitted to settlements both these conditions must be presumed to exist. It was also held that the word *lost* covered all cases in which a proprietor of land had either voluntarily or by operation of law deprived himself permanently or temporarily of the power to exercise full proprietary right over his property. In this case, a usufructuary mortgage in 1882 of the zamindari right was held to have caused loss of it so as to make the mortgagor an occupancy tenant of the *sir* retained by him. This of course is wrong, because the loss occurred after the coming into operation of the Rent Act of 1868, and a usufructuary mortgage does not cause loss of proprietary rights. The dictum of Straight J., in *Inder Sen v. Naubat Singh*,<sup>3</sup> on which reliance was placed, was not considered good law under the N. W. P. Rent Act of 1881, for it was held by the Allahabad High Court that a usufructuary mortgage did not amount to losing proprietary rights so as to make the mortgagor an exproprietary tenant of his *sir*-land.<sup>4</sup>

In *Suraj Baksh v. Bhagwan Din*,<sup>5</sup> the Board ruled that the loss of proprietary rights must have occurred before the date of the annexation of Oudh, dissenting from Rent Act Ruling No. 4. This was not necessary for the decision of the case.

<sup>1</sup> XIII U. D. 28=13 L. R. Rev. 137

<sup>2</sup> Rent Act Ruling No. 4.

<sup>3</sup> 7 All. 553 (at p. 555.)

<sup>4</sup> *Madho Bharti v. Barti Singh*, 16 All. 337.

<sup>5</sup> B. R. 7 of 1903.

In *Lal Bahadur v. Tirbhuwan Bahadur Singh*,<sup>1</sup> it was held that the loss of proprietary rights need not have taken place before the annexation, and B. R. 7 of 1903 was held to lay down an incorrect interpretation.

*Qu.* Whether possession as proprietor was to be deemed as lost by the grant of a lease or theka, permanent or temporary.

These rulings are not remarkable for such degree of consistency as one expects from the highest appellate tribunal in rent and revenue matters. Clearly to understand the precise purport of section 5 one must ascertain what result or effect the framers of the Act intended to produce, and then to examine the phraseology of the section to see how far the object has been attained. As was observed in *Suraj Baksh v. Bhagwan Din*,<sup>2</sup> and repeated in *Mata Prasad v. Sheoraj Kuar*,<sup>3</sup> the section was enacted as a compromise, after discussion with the taluqadars of Oudh in order to secure some concession in favour of village proprietors who had lost their proprietary rights by the inclusion of their villages in taluqas and were not entitled to under-proprietary rights. In the notes to section 3 (24) beginning p. 55 above it has been shown what owners of villages had under-proprietary rights. A slight repetition will not be out of place. Such owners may, for convenience, be divided into two classes, viz.—

(i) those who, after the absorption of their villages in taluqas, held the villages under leases from the taluqadars; and

(ii) those who, after the absorption, lost possession of their villages.

As regards (i) an owner was given under-proprietary rights by the Sub-settlement Act of 1866,

(a) in a case of absorption before 13th February, 1836, if he held his village thereafter as lessee for not less than 12 years between 13th February, 1836, and 13th February, 1856, provided at least 7 of such years were within the period between 13th February, 1844, and 13th February, 1856;

(b) in a case of inclusion between 13th February, 1836 and 13th February, 1844, if he held the village as lessee for not less than one year more than half the period between the date of such inclusion and 13th February, 1856, provided at least seven of such years were within the period 13th February, 1844 to 13th February, 1856; and

(c) in a case of inclusion between 13th February, 1844 and 13th February, 1856, if he held the village as lessee for not less than one year more than half of the period between such inclusion and 13th February, 1856.

All other village proprietors whose villages became absorbed in taluqas were not entitled to sub-settlements, though they might have under-proprietary rights in the *sir*, *nankar*, or other lands in their possession.

<sup>1</sup> B. R. 7 of 1919=III U. D. 694=5 R. and Cr. L. J. 210=8 O. L. J. 64=61 I. C., 158=3 L. R. Rev. 284.

<sup>2</sup> B. R. 7 of 1903.

<sup>3</sup> I U. D. 404.

The point to note is that the loss of proprietary rights must have taken place before the annexation of Oudh, *i. e.*, 13th February, 1856.

As regards (ii) :—An owner was given the status of under-proprietor :—

(a) if he was in possession as owner on 13th February, 1856 ;

(b) in the case of inclusion of his village in a taluqa before 13th February, 1856 but after 13th February, 1844, if he established his status at the settlement.

An owner whose village became absorbed in a taluqa before 13th February, 1844, unless his case fell within (i), lost all rights in his village except in the plots of land held by him as *sir*, *nankar*, or as tenant ; as also those in class (b) who failed to establish their status as under-proprietors at the sub-settlement. Of the latter some were under settlement court decrees declared to be lessees of their villages or of some areas therein either for permanency or for a term. Some of the others remained in occupation of some of the lands as *sir*, *nankar* or as tenants. The point to note is that proprietary rights must have been lost on or before 24th August, 1866, for in the most favourable case, *viz.* class (a) they became under-proprietors on 24th August, 1866.

Another class of cases of absorption or inclusion of villages in taluqas is provided for by the Hard Case Circular of 1866, noted before. (*Vide* p. 58.) The owners acquired under proprietary rights then.

Occupancy rights mentioned in section 5 were created as a concession to such owners, and from what has gone before it is clear that the loss of proprietary rights contemplated by the second paragraph of the section must have occurred on or before 24th August, 1866.

We have seen before that former village owners and others acquired under-proprietary rights in *sir*, *nankar* and other kinds of land, on account of their connection with the village. (*Vide* notes under the heading "under-proprietor" beginning on p. 55 at p. 59 specially). The proviso to the second paragraph expressly debars under-proprietors in a village or estate from claiming statutory occupancy rights in any area therein. (See also notes to the proviso at pages 183-184 *infra*.)

This brings us back to the words in the first paragraph of the section, *viz.*, "who have lost all proprietary right, whether superior or subordinate" to which little or no attention seems to have been paid in the cases hitherto decided. The question that arises is "is there any date before which under-proprietary rights should have been lost" or put in another way "is it enough for a claimant of occupancy rights to prove that at the date of the litigation he is not an under-proprietor or has no under-proprietary right in the land in dispute, without also showing when he lost the higher right?" In *Babu Ram v. Bhagwan Bux Singh*,<sup>1</sup> surrender of under-proprietary rights in 1867 was held to entitle the occupant to claim occupancy right. This discussion is based on the assumption that subordinate proprietary rights include under-proprietary

<sup>1</sup> I U. D. 399.

rights, which is not quite clear. If they do not, the word proprietor in the second paragraph must mean the owner of proprietary rights, whether superior or subordinate, contrary to the definition contained in section 3 (6) of the Oudh Act. This seems to be the correct view to take as proprietor is expressly and emphatically made not to include an under-proprietor.

Considering the object of the section, it is doubtful whether a usufructuary mortgage was contemplated by the legislature as being an event which prevented the mortgagor from being deemed to be in possession as proprietor within the meaning of the second paragraph. The only event that was contemplated as causing loss of possession as proprietor was the complete absorption of a village in a taluqa.

The burden of proving that the land did come into the occupation of the tenant for the first time since 13th February 1856, is on the landlord.<sup>1</sup>

Where in a suit to contest a notice of ejectment it was found that the tenant's father held the land in 1866 and for some time previously, and was a descendant of former proprietors, the Board of Revenue sent down the case for a trial of the question whether the tenant had a right of occupancy.<sup>2</sup>

A's ancestors claimed under-proprietary rights in the settlement of sixties but were given a heritable permanent lease, which they lost for failure to pay rent. The acceptance of a permanent lease was waiver of any claim to occupancy rights. If A continued to cultivate after the loss of the permanent lease he did so as an ordinary tenant.<sup>3</sup>

After a decree for possession to the mortgagee but before its execution, the mortgagor made a gift of some bighas of his *khudkasht* land in favour of A. There was no evidence that the mortgagor either as proprietor or as tenant cultivated or held the land in question on the 24th of August, 1866. The mortgagee sued A for possession of this land. It was held that this section which was intended to apply only to expropriators who had become mere tenants by August 24, 1866, did not apply, and the plaintiffs were entitled to a decree for possession.<sup>4</sup> This shows that the loss of proprietary rights must have taken place before 24th August, 1866.

**Been in possession as proprietor.**—If the proprietor created a usufructuary mortgage, he might be deemed to be in possession as proprietor so long as he could redeem the mortgage, and hence if his right to redeem was not destroyed until after 13th February, 1826, he could claim the benefit of this section.<sup>5</sup>

<sup>1</sup> *Muhammad Ishaq Khan v. Lallu Singh*, B. R. 12 of 1910.

<sup>2</sup> *Muhammad Nawab Ali Khan v. Mathura*, B. R. 4 of 1905.

<sup>3</sup> *Sukhraj Kunwar v. Bhagwan Bux Singh*, III U. D. 224.

<sup>4</sup> *Akbari v. Badri Prasad*, 5 O. C. 176, followed in *Bhoga Singh v. Pokhar Singh*, 8 O. C. 353.

<sup>5</sup> *Kali Din v. Kamta Singh*, II U. D. 595. See note "who have lost all proprietary right," *supra* at page 176.

**Inherited** shows that the claimant claiming through another must have inherited, and not obtained as a gift from him.<sup>1</sup>

**Proof of possession as proprietor within 30 years before February, 1856.**—In *Chandra Pal Singh v. Bhagwan Bux Singh*,<sup>2</sup> possession as proprietor was inferred from the facts that the ancestor during those thirty years had settled the village, dug wells and planted groves. Where the only evidence was a *rubkar* of the summary settlement in which the tenant's predecessor claimed that his ancestors had originally held the zamindari and that the then Raja of Dera had no right to the ancestral zamindari, and stated that the then Raja had the land in his *kabuliat* but fell into arrears, and that his father was in possession and used to pay land revenue to the *taluqdar*, (and this was corroborated by the patwari and the kanungo), and it appeared that no claim was made to underproprietary rights, it was held that this evidence was not sufficient to prove that the tenant's predecessors had been in possession as proprietors within 30 years before 1856.<sup>3</sup>

A person was found cultivating certain fields at the regular settlement and in 1866 he claimed to be declared a proprietor of the village. The claim was disallowed but he was declared to be a former zamindar of the village. It is a natural inference from these facts that he was a zamindar at some time within 30 years of the annexation and therefore had occupancy rights.<sup>4</sup>

Where a heritable but non-transferable *kabzadari* was created by an agreement in 1868, but several transfers took place, it was held that the *kabzadari* was not an occupancy tenure. The owner could not impeach the past transfers but could any future one.<sup>5</sup>

It has been held that muafi land recorded as occupancy in the last two settlements was occupancy land.<sup>6</sup>

A permanent lease at a very nominal rent and without any right of re-entry on non-payment is an out and out sale.<sup>7</sup>

**Heritable, i. e., according to the personal law.**

**Proviso.**—The tenant or a co-sharer of his must have possessed under-proprietary rights in the village.

*Co-sharer* did not include mere collateral relations.<sup>8</sup>

**Under-proprietary rights in the village.**—A person entitled to a cash *nankar*, though he may have a charge on the village lands, does not

<sup>1</sup> *Jagdeo Singh v. Karam Ali*, II U. D. 622.

<sup>2</sup> X U. D. 138.

<sup>3</sup> *Avadh Indra Pratab Sahi v. Udat Raj Singh*, II U. D. 315=3 R. D. 236.

<sup>4</sup> *Bhawani Bhik v. Muhammad Mehdi Ali Khan*, III U. D. 296.

<sup>5</sup> *Muhammad Zaki v. Rashid Ali Khan*, III U. D. 562.

<sup>6</sup> *Manna Lal v. Kewal Singh*, 12 L. R. Rev 391=16 R. D. 41.

<sup>7</sup> *Param Sukh v. Sheo Murat*, 1933 A. I. R. Oudh 363=XIV U. D. (H. C.) 146=14 L. R. Rev. 539=10 O. W. N. 660=17 R. D. 636.

<sup>8</sup> *Jagdamba Singh v. Bhagwan Baksh Singh*, II U. D. 139.

possess an under-proprietary right *in any land* in the village; hence his being so entitled did not disentitle him to claim occupancy rights under this section.<sup>1</sup>

But other facts may show that he has under-proprietary rights, and if occupancy rights are set up they must be ascertained.<sup>2</sup>

Existence of underproprietary rights in the same holding in the claimant for occupancy rights was fatal to the latter.<sup>3</sup>

But if he relinquished his under-proprietary right long ago, there was no bar to the occupancy rights.<sup>4</sup>

Under-proprietary rights acquired by inheritance after the accrual of occupancy rights did not affect the latter.<sup>5</sup>

The fact that a lease was executed by a tenant with a right of occupancy under this section fixing a rent does not deprive him of the occupancy rights.<sup>6</sup>

An entry at a settlement prior to 24th August, 1866, that a tenant was *maurusi* had no meaning, as before that date occupancy rights were not recognised.<sup>7</sup>

Where a difference existed between the entries in the *fard tasfia lagan* and the *khasra* entries at the first regular settlement, the former was relied on in *Gaya Prasad Singh v. Ratan*.<sup>8</sup>

**Last paragraph.**—In 1867 *D* sued for under-proprietary rights on account of his being an old zamindar. He failed to establish his claim but the *taluqdar* allowed him to have a decree for *kabzadari* and retain the land at a certain fixed rent. *Held* that *D* did not get a right of occupancy as defined in section 5, but a right of occupancy in the ordinary meaning of the term.<sup>9</sup> An agreement in a deed of sale of zamindari rights did deprive the vendor of any occupancy rights unless there was an express provision to that effect.<sup>10</sup>

<sup>1</sup> *Sri Ram Kumoor v. Hanoman Singh*, II U. D. 639; *Gauri Shankar v. Court of Wards, Ajodhia Estate*, II U. D. 562.

<sup>2</sup> *Gauri Shankar v. Court of Wards, Ajodhia Estate*, II U. D. 562.

<sup>3</sup> *Baburam v. Bhagwan Baksh Singh*, I U. D. 399.

<sup>4</sup> *Babu Ram v. Bhagwan Singh*, I U. D. 399=29 I. C. 653.

<sup>5</sup> *Mohan Lal v. Achhaibair Singh*, 2 U. P. L. R. (B. R.) 63=57 I. C. 54=IV U. D. 74.

<sup>6</sup> *Debi Singh v. Bhaiya Ambika Dat*, B. R. 4 of 1912=III U. D. 436; *Court of Wards v. Sant Baksh Singh*, 3 Rev. and Cr. L. J. 246=III U. D., 613=4 O. L. J. 456=42 I. C. 53 (even though the rent be reduced); *Gaya Prasad Singh v. Ratan*, II U. D. 563.

<sup>7</sup> *Partab Bahadur Singh v. Ranjit Singh*, II U. D. 132.

<sup>8</sup> II U. D. 563.

<sup>9</sup> *Jang Bahadur v. Rae Raja*, 7 O. C. 265.

<sup>10</sup> *Debi Singh v. Bhaiya Ambika Dat Ram*, B. R. 4 of 1912=III U. D. 346.

**Section 25, Oudh Laws Act**—Land reserved under section 25, Oudh Laws Act, to an expropriator after his proprietary rights had been sold in execution of a decree, was for his cultivation and occupation, and was not transferable, similar to the land of a tenant to whom section 5 applies.<sup>1</sup>

Section 25, Oudh Laws Act, did not apply to private alienations.<sup>2</sup>

Foreclosure under section 87 of the Transfer of Property Act was deemed to be a voluntary transfer to which section 25, Oudh Laws Act, did not apply.<sup>3</sup>

**Similar rights**—Leases or grants which created hereditary but not transferable interests did not make the lessees or grantees tenants with rights of occupancy as contemplated in section 5, for instance, holders of *marwat* grants.<sup>4</sup>

A settlement decree declaring A entitled to hold certain land by way of *kabzadari*, (being a right something between *sir* and *kabzadari*) at the previous low rent did not create a tenancy with a right of occupancy as defined in section 5.<sup>5</sup>

The word *kabzadari* did not necessarily connote occupancy rights, the real meaning being ascertainable from the claim made before and the judgment of the settlement court by which it is created.<sup>6</sup>

*Kabzadari* rights could be made transferable by landlord's consent.<sup>7</sup>

A person holding under a settlement decree which declares his rights to be *kabzadari dawami*, heritable and transferable, had a higher position than a tenant under section 5.<sup>8</sup>

A transfer of *kabzadari* rights could be challenged by the heirs of the transferor.<sup>9</sup>

6. Nothing in the last foregoing section shall be construed to restrict Saving of power to the power of a landlord to confer by registered document on any persons other than those mentioned in that section a right of occupancy in the lands which they hold or cultivate.

<sup>1</sup> *Bodha Singh v. Rim Sumran*, 7 O. C. 312.

<sup>2</sup> *Bhoga Singh v. Pokhar Singh*, 8 O. C. 353.

<sup>3</sup> *Suroj Baksh v. Bhagwan Din*, B. R. 7 of 1903; *Kanchan Singh v. Muzaffar Husain Khan*, III U. D. 564—2 U. P. L. R. (B. R.) 132.

<sup>4</sup> *Kalka Singh v. Sheo Ratan*, B. R. 18 of 1910—II U. D. 434; *Jagan Nath Singh v. Drigbijai Singh*, IV U. D. 587—7 R. and Cr. L. J. 156.

<sup>5</sup> *Bunyad Husain v. Ram Sahai Singh*, I U. D. 357.

<sup>6</sup> *Bindha Singh v. Nahi Khanam*, B. R. 23 of 1892; *Baldeo Baksh Singh v. Sahib-unissa*, B. R. 11 of 1912; *Maharaja v. Mathura*, V U. D. 145.

<sup>7</sup> *Muhammad Zaki v. Rashid Ali Khan*, 2 U. P. L. R. (B. R.) 135.

<sup>8</sup> *Ram Dayal v. Bishnath Singh*, I U. D. 398.

<sup>9</sup> *Pirithi Singh v. Lachmi*, VII U. D. 219—1926 R. C. 466.



A person upon whom a landlord conferred occupancy rights under a compromise in a suit was an occupancy tenant under section 6; and if he did not pay any rent for the holding it could be determined under section 33<sup>1</sup> of the Oudh Act. A person holding under a lease, conferring heritable and non-transferable rights giving power to sublet and imposing liability to ejectment only for non-payment of arrears of rent, was an occupancy tenant under the section.<sup>2</sup>

*But the lease must clearly show by its terms that it was intended to be heritable and not personal to the lessee.*<sup>3</sup>

Though occupancy rights can be conferred only by a written instrument, there is nothing to prevent a landlord and tenant from entering into a special contract of tenancy, verbally or in writing. An unregistered perpetual lease conveying heritable rights, *naslan bad naslan*, is such agreement in writing within the meaning of the last part of section 5, Oudh Rent Act.<sup>4</sup>

Where a landlord recognised the transferee of an occupancy holding as tenant, the transferee did not become an occupancy tenant under section 6.<sup>5</sup>

The section permitted conferral of occupancy rights by registered documents only. This however was not a bar to a plea of estoppel in denial of such rights being set up against the landlord, and the rulings to that effect passed in respect of the Province of Agra will apply with equal, if not greater, force to Oudh. An occupancy tenant was ejected for non-payment of arrears of rent. In settlement of a dispute about the standing crops the landlord put in a petition asserting that the tenant had paid the arrears and that he wished to replace the tenant in his holding at the old rent with the status of an occupancy tenant. The landlord received the rent thereafter. It was held that the tenant had occupancy rights and the landlord, having received the rent on a promise to continue occupancy rights, was estopped from ejecting the tenant.<sup>6</sup> A got his name recorded as an occupancy tenant at the recent settlement. Later on, the landlord sued A for enhancement of rent as an occupancy tenant, got a decree, and realised the enhanced rent from him. A was held to be an occupancy tenant.<sup>7</sup>

This was because the allegation in the plaint in the enhancement suit was an admission that A was an occupancy tenant which, with the decree and realisation of the enhanced rent, estopped the landlord from

<sup>1</sup> *Chunni Shah v. Evas Ali*, II U. D. 628.

<sup>2</sup> *Badri Bishal v. Batasha*, 4 O. L. J. 104—39 I. C. 152—3 Rev. and Cr. L. J. 158—III U. D. 602.

<sup>3</sup> *Nabi Buksh v. Muhammad Mohsin Ali*, B. R. 2 of 1892; *Muhammad Nawab Ali Khan v. Mathura*, B. R. 4 of 1905.

<sup>4</sup> *Sheo Partab Singh v. Dilraj*, XIX U. D. 192—1938 R. D. 599.

<sup>5</sup> *Jai Nurain Misra v. Bansidhar*, XVI U. D. 682—1925 R. D. 558.

<sup>6</sup> *Gulsari Lal v. Puran Kuwar*, B. R. 16 of 1913.

<sup>7</sup> *Pokhpal Singh v. Lal Umrao Singh*, II U. D. 486—4 R. D. 46.

denying A's status.<sup>1</sup> A proceeding for ejectment in 1896 was compromised on the terms that the tenant was to dig a *pucca* well and the zimindar conceded occupancy rights to the tenant. The latter constructed the *pucca* well. The landlord acted up to the compromise until 1900 when he sought to eject the tenant. The Board held that the landlord was estopped from denying occupancy rights.<sup>2</sup> A tenant alleging himself to have been wrongfully dispossessed sued his landlord for recovery of possession, for compensation and for costs. In this suit, a compromise was filed, by which the landlord in consideration of the tenant giving up his claims for compensation and for costs, recognised the tenant's right to remain in possession as occupancy tenant. Even though the tenant may not have been an occupancy tenant, the landlord was estopped from denying his position as such.<sup>3</sup> See also *Ramphal v. Lal Sri Saran*.<sup>4</sup>

The ruling to the contrary in *Sohan Lal v. Mohan Singh*,<sup>5</sup> to the effect that conferral of occupancy rights in *sir*-land was illegal and would not estop an auction purchaser of the proprietary rights of the previous owner, was hardly applicable to Oudh where there was no restriction as to the class of land over which occupancy rights could be acquired as there was in the province of Agra, but it struck a warning note as to unrestricted application of the rule of estoppel. In *Indar v. Kunji Lal*,<sup>6</sup> the right of one of several landlords to confer occupancy rights was negated. In *Ashfaq Husain v. Chiddoo*,<sup>7</sup> a compromise in an ejectment suit by which the *lambardar* recognised occupancy rights in the tenant was held binding on his co-sharers. In *Indar Kuar v. Kunji Lal*,<sup>8</sup> the power of one of several landlords to confer occupancy rights was said not to be settled law. In *Sheo Ratan Singh v. Gur Prasad Singh*,<sup>9</sup> it was negated. As applied to Oudh, the utmost these rulings mean was that conferral of occupancy rights except by a registered document will not be recognised.

In any case, what operated as estoppel was some act, representation or agreement or conduct of the landlord. A mere entry by the *patwari* that a tenant was an occupancy tenant which has not been challenged by the landlord did not operate as estoppel,<sup>10</sup> nor did a mere misdescription of the status of a tenant in the plaint in a suit for arrears of rent operate as estoppel.<sup>11</sup>

<sup>1</sup> *Raghubar Singh v. Sheo Govind*, II U. D. 448. So also *Dhano v. Shakuran*, II U. D. 284.

<sup>2</sup> *Girwar v. Ibrahim*, II U. D. 545.

<sup>3</sup> *Niamat Ali v. Ahmad Ali*, II U. D. 242.

<sup>4</sup> XII U. D. 278.

<sup>5</sup> II U. D. 360.

<sup>6</sup> II U. D. 316.

<sup>7</sup> I U. D. 300.

<sup>8</sup> II U. D. 316.

<sup>9</sup> I U. P. L. R. (B. R.) 13.

<sup>10</sup> *Bindrabai v. Bindrabani*, 4 R. and Cr. L. J. 201; *Sheo Ratan Singh v. Gur Prasad Singh*, I U. P. L. R. (B. R.) 13.

<sup>11</sup> *Ram Kuar v. Mauji Ram*, II U. D. 347.

4. In this connection section 7 of the Oudh Act may also be cited.

7. If a tenant having a right of occupancy is ejected in accordance with the provisions of section 52, from the land in which he possesses the right, he shall thereupon lose his right of occupancy in that land.

Loss of right of occupancy.

The reason for the enactment of this section is not clear. Ejectment, *ipso facto*, causes loss of the rights possessed by the tenant ejected. It cannot be that the section was intended to point out the only case in which loss of occupancy rights occurred. For surrender, abandonment, death without heirs, or acquisition of land for public purposes would in any case cause loss of occupancy rights in the land.

29. Every person belonging to one or another of the following classes shall be a hereditary tenant, and subject to any contract which is not contrary to the provisions of section 4 shall be entitled to all the rights conferred, and be subject to all the liabilities imposed on hereditary tenants by this Act, namely :

Hereditary tenants.

(a) every person who is, at the commencement of this Act, a tenant of land otherwise than as a permanent tenure-holder, a fixed-rate tenant, a tenant holding on special terms in Oudh, an ex-proprietary tenant, an occupancy tenant, or except as otherwise provided in this Act as a sub-tenant or a tenant of *sir* ;

(b) every person who is, after the commencement of this Act, admitted as a tenant otherwise than as a tenant of *sir* or as a sub-tenant ;

(c) every person who, in accordance with the provisions of this Act, acquires hereditary rights.

1. Sections 29, 30 follow the language of section 19 of the Agra Act, and are in some respects similar to sections 36, 37 Oudh Act, by which statutory tenants were created. Now, there will be no statutory tenants and their place will be taken by hereditary tenants.

Sub-section (1) corresponds to section 19(a) of the Agra Act and section 36 of the Oudh Act. Sub-section (2) corresponds to section 19(b) of the Agra Act and section 37 of the Oudh Act.

2. Section 29 clause (a) indicates the classes of persons who cannot be hereditary tenants, and these are also persons who could not be statutory tenants. Section 30 points out the classes of land over which hereditary tenancies will not arise, and these are also classes of land over which statutory tenancies did not arise.

3. Before the Oudh and the Agra Acts, persons admitted to tenancies became ordinary or non-occupancy tenants, unless the higher rights of permanent tenure-holders, fixed rate tenants, occupancy or exproprietary tenants or tenants on special terms in Oudh, or the lower rights of sub-tenants were conferred on or acquired by them. Those Acts

made the persons so admitted statutory tenants, in Oudh limited to seven and subsequently ten years' tenancies, and in Agra to life tenancies. Now they will have hereditary rights.

Tenants of *sir* and sub-tenants will not be hereditary tenants except when otherwise provided by the Act.

4. **Subject to any contract not contrary to section 4.**—Persons holding under such valid contracts will not be subject to the rights and liabilities of hereditary tenants, but for fourteen years will be governed by the terms of the contract. The class of tenants to which they would belong is not indicated. Either they will be non occupancy tenants for 14 years and hereditary tenants thereafter, or hereditary tenants without the rights and liabilities of such tenants

5 **Person who was at the commencement of the Act a tenant,** shall, unless he be of an excepted class become a hereditary tenant and the issue in each case where a hereditary tenancy is claimed under section 29(a) will be whether at the commencement of the Act, the claimant was a tenant not belonging to one of the excepted classes, *i e.*, a person who had been admitted to the tenancy or had been recognised by the landlord or landholder as tenant.

Under section 3 in note No. 24 to sub-section (23) the matter as to who may be regarded as tenants has been discussed at some length and those notes may be referred to (*vide supra* page 43 and the following pages). Statutory tenants or their heirs who were such tenants at the commencement of the Act will become hereditary tenants on that date.

6. **Every person.**—The word *every* is very important and wide enough to include a lessee for a term or in perpetuity for an indefinite term. It also shows that where A, B and C are admitted to a holding as co-tenants, all three become hereditary co-tenants.

7. A person includes any company or association of individuals, incorporated or not. Hence, idols, companies, joint families, trusts, *muths, etc.*, in fact any person who can be a tenant may be a hereditary tenant.

A trespasser is not a tenant although he was a tenant at one time and had been ejected.<sup>1</sup>

A tenant of 18 bighas was ordered to be ejected and *dakhal* was given against him, but crops stood on a very small part. Instead of having a fair rent fixed under sections 97 and 98 of the Act of 1926, the landlord sued the tenant three years after, for rent of the holding for the year which was in arrears at the time of the *dakhal*, being a year for the second half of which the tenant was no longer the tenant. It was held that without any of the landlord's intention to readmit or

<sup>1</sup> *Raji v. Ram Lagan*, 1930 A. L. J. 637.

of his written assent to the continuance in possession, a readmission to the tenancy of the holding could not be inferred.<sup>1</sup>

8. Cl. (a). **Is at the commencement of this Act.**—A tenant entitled to be in possession on the date the Act comes into effect will become a hereditary tenant and will be entitled, if wrongfully dispossessed, to be restored to possession by a properly framed suit under section 183,<sup>2</sup> unless a successful suit for his ejectment be instituted before that date.<sup>3</sup> A co-tenant who was not impleaded within limitation in a suit for ejectment filed against the other co-tenants before the commencement of the Act will become a hereditary tenant although he was impleaded after that date as a defendant.<sup>4</sup>

Where a *khudkash* plot of a zamindar was mortgaged to the extent of half with *A* (in 1334 F) who was also allowed to continue cultivation of the other half (begun in 1333 F), *A* was mortgagee of one-half and statutory tenant of the other half.<sup>5</sup>

A tenant holding under a term lease, or under an agreement made validly and for consideration providing immunity from ejectment except for default in regular payment of rent or for breach of some other specified condition was a tenant-in-chief at the commencement of the Act, but did he become a statutory tenant? The Patna High Court answered in the affirmative. On 7th September, 1926, *A* held certain land of *B* under a lease the term of which was to expire later. It was contended that *A* can be ejected where the term had expired, and was not a statutory tenant as the Act was not retrospective and that section 8(1) of the Act of 1926 did not affect a contract which was in existence on 7th September, 1926. It was held by the Patna High Court that as the landlord had no right of present possession on 7th September, 1926, there was no question of the retrospective effect of the Act, as it did not affect such right, and that under the expression used in section 19(a), since *A* was a tenant on 7th September, 1926, he became a statutory tenant, and that every agreement mentioned in section 8(1) is general and embraces a contract which was in existence on 7th September, 1926.<sup>6</sup>

<sup>1</sup> *Sheo Gulam Mal v. Maharaja of Dumraon*, XIX U. D. 225—1938 R. D. 655 distinguishing *Devi Dayal v. Chhanai*, X U. D. 127; *Ram Singh v. Durgu Narain Singh*, IX U. D. 195 in which it had been held that a previous suit for ejectment against a trespasser under section 58 of the Act of 1901 estopped the landholders from suing the tenant as a trespasser.

<sup>2</sup> *Ganesh v. Badri Prasad*, IX U. D. 18—9 L. R. Rev. 20—1927 R. C. 455.

<sup>3</sup> See *Raghu Nath Sahai v. Bhulwa*, IX U. D. 116—9 L. R. Rev. 230, *Sultan Singh v. Karan Singh*, 269; *Jai Ram Singh v. Sohan Lal*, 10 L. R. Rev. 6; *Ram Adhar v. Narain* XII U. D. 218

<sup>4</sup> *Sripat Buz Singh v. Deo Narain*, XI U. D. 2.

<sup>5</sup> *Jageshar v. Ghurpati*, 12 L. R. Rev. 400—16 R. D. 43.

<sup>6</sup> *Ram Rambhaya Prasad Singh v. Deoki Ahir*, 15 Pat. 619—1937 A. I. R. Pat. 180.

Under the earlier Acts, a perpetual lessee was held to be a non-occupancy tenant.<sup>1</sup> In more recent cases, the Board looked upon permanent leases as creating occupancy rights.<sup>2</sup>

A permanent lessee (in Oudh) is defined in section 3(15). He is to be like a hereditary tenant.

Where a tenant mortgagee of proprietary rights in plots including those comprised in his holding is redeemed, the tenant rights revive and he will become a hereditary tenant.<sup>3</sup>

Admission could have been implied or inferred from circumstances

A suit for ejectment of a person without averring that he was a trespasser was taken to be recognition of his status as tenant, even though it was unsuccessful because owing to the non-fixation of rent, the land was held not to be tenancy land,<sup>4</sup> unless the plaint read with the circumstances showed that suit was really one as against a trespasser.<sup>5</sup> A suit for fixation of rent followed by a decree was a clear indication of admission to tenancy,<sup>6</sup> so a decree for rent.<sup>7</sup>

9. Cl. (b).—The remarks made as to tenants holding under special contracts or agreement in the notes to cl. (a) apply to this clause also.

*Admitted, i. e.*, by a person entitled or empowered to admit, *e. g.*, the zamindar, or co sharer in exclusive proprietary possession of the area in which the land is, etc.

10. (i) **Admission as a tenant.**—Implies a contract of tenancy, express or implied from circumstances. A contract is between two parties who agree to the same thing in the same sense. An owner of land cannot make a person his tenant by simply calling him so or having his name entered in the village papers, unless such other person assents expressly or impliedly by contract. For instance, a tenant dies. His heir is entitled to succeed him to the tenancy, but he is not bound to take it up. If he refuses to, or does not, take it up, he does not become a tenant and is not liable for the rent of the land since his ancestor's death, although the patwari or the zamindar or both has or have got

<sup>1</sup> *Deo Narain Singh, v. Jagat Narain Singh*, 8 L. R. Rev. 261=VIII U. D. (H. C.) 238=1927 R. C. 281=103 I. C. 237; *Gauri Sahu v. Meera*, 24 P. L. R. (B. R.) 69; *Ram Nath v. Azadh Bihari*, II U. D. 627.

<sup>2</sup> *Shyam Sunder Singh v. Rani Dhan Dei Kunwar*, XII U. D. 341; *Rupan Sahu v. Chandra Deo Singh*, B. R. 10 of 1930; *Ram Nareish v. Ram Dui Singh*, XI U. D. 212; *Mustafa Husain v. Raghu Nath Ram*, XIII U. D. 99.

<sup>3</sup> See *Bhairon v. Banti Ram*, 11 L. R. Rev. 214=XI U. D. 135.

<sup>4</sup> *Ram Singh v. Durga Narain Singh*, IX U. D. 105=10 L. R. Rev. 241=12 R. D. 823.

<sup>5</sup> *Nathu v. Sant Kunwar*, III U. D. 130=4 R. and Cr. L. J. 203=5 R. D. 537; *Rameshwar Doyal v. Roshan*, II U. D. 78=3 R. and Cr. L. J. 16=4 R. D. 544, *Rakhan v. Kalka*, IV U. D. 137=1 L. R. Rev. 194=6 R. D. 242; *Janwanti v. Balbhaddar*, VI U. D. 304.

<sup>6</sup> *Raghu Nandan Rai v. Bansdeo Raj*, XIV U. D. 145=14 L. R. Rev. 303.

<sup>7</sup> *Tika Ram v. Uday*, 7 A. W. N. 28.

his name entered as tenant, and although he is liable as legal representative to the extent of the assets of the deceased in his hands, for any arrears of rent due from the deceased at his death<sup>1</sup> As Sir John Edge, C. J., observed in the first mentioned case, "the person upon whom the right of occupancy devolves is not bound to accept the tenancy, but if he does accept it, he must accept it subject to its burdens", one of such burdens being the liability to pay rent, and "if such person elects not to accept the right of occupancy his liability would be limited to that of a legal representative to whom assets had come." The heir may not have taken up the tenancy because he was unwilling to or because the tenancy had been sold as happened in 17 All 35. The question arose recently in a very direct form before a single judge. There, the name of the heir of a tenant was entered in the *khatauni* as tenant in place of his ancestor, and without any application by him. He did not take up the land and when sued for arrears of rent due since the decease of his ancestor, denied the existence of the relation of landlord and tenant, and his liability for the claim. The learned judge ruled, and rightly, that he never became the tenant, though he might have become one if he had chosen to take up the land as heir to his ancestor.<sup>2</sup> This decision was, it is submitted, wrongly reversed in Letters Patent Appeal.

Conversely, a person cannot constitute himself a tenant of a land by simply calling himself one or having his name entered in the village papers or taking possession without leave or license. In Bengal, tenancy by squatting seems to be fairly common. In an old case,<sup>3</sup> it was observed "we think that though by the law of landlord and tenant as applied in England, a person who takes up and cultivates the land of another (there being no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator) would not be allowed to be regarded as a tenant, but treated as a mere trespasser, the peculiar circumstances of this country preclude the applicability of the technical doctrines of the English law of landlord and tenant to such a case. Here it is a very usual thing for a man to squat on a piece of land, or to take into cultivation an unoccupied or waste piece of land. Tenancy in a great many districts in Bengal commences in this way, and where it does so commence, it is presumed that the cultivator cultivates by the permission of the landlord, and is under an obligation to his landlord to pay a fair rent when the latter may choose to demand it: thus the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded as he would be by law administered in England, as a trespasser but as a tenant."

In these provinces, tenancy by squatting has never been encouraged or countenanced, although provisions have been made for payment of compensation for such wrongful user as rent or as compensation for

<sup>1</sup> *Lekhraj v. Jai Singh*, 14 All 38=12 A. W. N. 143; *Maharaja of Benares v. Dayal Singh*, 19 All. 35=17 A. W. N. 88

<sup>2</sup> *Rudra Dat v. Ram Kumar*, S. A. 255 of 1934 decided on 27th September, 1937.

<sup>3</sup> *Nitya Nand Ghosh v. Krishna Kishor*, W. R. Sp. No. Act X, 82.

use and occupation. Section 34 of the Agra Tenancy Act, 1901, empowered a landholder to sue a cultivator who had taken possession, or continued in possession, without his consent, for recovery of a fair occupation rent for the period of such occupation and expressly enacted that such period of occupation was not to be regarded as occupation by a tenant so as to count towards the period of prescription for the acquisition of occupancy rights. By a curious chain of reasoning a single judge ruled that since a landholder was under that Act a person to whom rent was payable and section 34 rendered a person occupying land without the consent of the person entitled to occupy it liable to pay rent, the latter might in a way be regarded to be the landholder of the former.<sup>1</sup> Under section 44 of the Agra Tenancy Act, 1926, this position was emphatically repudiated, as it enacted that such a person might in addition to being ejected, have to pay damages which may extend to four times the annual rent.

The Oudh Act had section 127 to a similar effect.

Now section 180 reproduces the gist of those sections in this respect.

(ii) Since tenancy by admission is a matter of contract, *i.e.*, *consensus ad idem*, both landholder and the other should understand that the admission of the other is as tenant and in no other character. A is the mortgagee of a tenant in possession. For years he had been passing *kabuliats* as tenant under a mistake of his exact legal position, as he could not be a tenant. Suits to redeem his mortgage were defeated on technical pleas taken by him while asserting his position as mortgagee. There was no suggestion by anyone that he was a tenant. He was shown in the papers as mortgagee until 1915, and from 1926-7 he was described as *kabiz*, though the actual position was that the landholder looked upon him as tenant whereas A regarded himself as mortgagee until 1915, when the mortgagor and his widow died heirless, and the land lapsed to the zamindar. Until then there was no admission of A as tenant. When the Tenancy Act of 1926 came into operation, A had not acquired occupancy rights by 12 years' occupation as tenant, and therefore he became a statutory tenant, and his sons after him took possession as heirs of a statutory tenant.<sup>2</sup> Now A will be considered a hereditary tenant.

The grant of an ordinary *puta* to the holder of a *muafi* at a rent which was favourable, being somewhat less than the revenue of the land, cannot be taken to mean that the lessee gave up his rights as a *muafidar* and consented to his admission to a mere tenancy.<sup>3</sup>

Where a zamindar took up the position that the person in occupation as tenant for some considerable time was admitted by him not as the landlord but as the mortgagee of an occupancy tenant, he had to prove the

<sup>1</sup> *Balli v Naubat*, 9 A. L. J. 771—16 I. C. 120.

<sup>2</sup> *Bishwanath Prasad v. Maharaja of Benares*, 1938 A. L. J. (B. R.) 39.

<sup>3</sup> *Talwadhuri Singh v. Sukhraj Koor*, 14 L. R. Rev. 148—XIV U. D. 436



mortgage according to law, and not by vague oral evidence or an unregistered deed.<sup>1</sup>

(iii) An admission to tenancy had to be made by the owner or person entitled in law to admit. A mortgagee in possession or thekadar in the absence of fraud on the mortgagor or owner or restriction on his powers could admit tenants to the occupation of land (and thereby could confer all the rights and privileges of tenants) in the ordinary course of prudent management. Admission of a person as tenant by a thekadar created a statutory tenancy unless the owner had restricted the powers of the thekadar and such restrictions were known to the person admitted,<sup>2</sup> and the admission was not in good faith in the ordinary course of management. Under the Agra Act, 1926, a thekadar could admit tenants in the ordinary course of management, but not expressly for a period exceeding seven years or extending beyond the term of his theka, unless such power was expressly conferred on him. This is also the rule laid down in section 211 of the present Act. Where on the death heirless of an occupancy tenant, the thekadar granted two receipts, one to his daughter in the name of the deceased for rent paid by her on account of the occupancy land, and the other to her infant son, noting that it was on account of the occupancy rent, he was held to have accepted the son as tenant.<sup>3</sup> One of several mortgagees who used to collect rents and grant leases, was deemed to be the authorised agent of the others for these purposes, and a person admitted by him was not deemed to be a trespasser as against one who later on became the landlord.<sup>4</sup>

Long term and perpetual leases, and leases on very low rates of rent were as a rule not binding on the mortgagor or the lessor of a theka, because such leases were not in the ordinary course of management, and on redemption of the mortgage or termination of the theka ceased to be operative,<sup>5</sup> unless the mortgagor or the lessor admitted the lessee to occupation by acceptance of rent<sup>6</sup> or by other conduct of his.<sup>7</sup>

<sup>1</sup> *Shen Nath v Ganes-h Bux Singh*, VI U D 66=5 L R. Rev. (O.) 41=1924 R. C. 51=9 R. D. 495.

<sup>2</sup> *Pudai Khan v. Moh. Mehdi Ali Khan*, II U D 626=33 I C 203, *Udey v Lal Partab*, B R 9 of 1892; *Gur Sarin v Jagan Nath* X U. D. (H C.) 37=10 L. R. Rev. 19, *Contra Krishna Kumari v Prithwan Dat*, XI U. D. (H. C.) 189=10 L. R. Rev. 216=12 R D. 50, *Chhattarpal Singh v. Bhadeshwar Prasad Singh*, XI U. D. (H C.) 61=11 L. R. Rev. 18, which held that the interest of a tenant admitted by a thekadar ended with his theka.

<sup>3</sup> *Parbhu Narain Singh v Ganeslu*, XIII U D 94=12 L R Rev. 357

<sup>4</sup> *Kashi Prasad v. Ruder Singh*, XII U. D. 186=12 L R. Rev. 197.

<sup>5</sup> *Ram Chand v. Hans Raj*, 3 A. L. J. 517=16 A. W. N. 41; *Jagram v. Kokila*, V U. D 573=4 L. R. Rev. 366=10 R. and Cr L. J 1=1923 R. C. 288; *Ram Das Singh v Udit Narain Singh*, XX U. D. 189.

<sup>6</sup> As in *Collector of Basti v. Sarnam Singh*, 8 A. L. J. 802.

<sup>7</sup> *Mutin Husain v. Budan Singh*, XIII U D. 160=13 L R Rev. 395, *Moh Rana Husain v Bhaqwan Das*, XIV U D 423=14 L R Rev 144, *Jogra v Kalpi*, II U D. 659, *Lal v. Udey Partab*, B. R 9 of 1892; *Pudai Khan v. Moh. Mehdi Ali Khan*, II U. D. 626=33 I. C. 203=2 O L J 754; *Ram Dulari v. Bulak Ram*, B. R 7 of 1920=7 R and Cr. L J. 42; *Rang Das v. Mungroo*, II U. D. 577; *Gobre Singh v. Jwala Prasad*, 14 O. C 204=11 I. C 924; *Ram Aular Singh v. Moh Ram*, IV U D. 120=1 L R. Rev. 190=7 R. and Cr L J 7; *Harpal v Bal Goind*, 7 All 588=5 A. W. N 134, *Mahabir v. Beni Madho*, 8 L. R. Rev. 29=9.6 R C. 602.

These cases, except *Ram Chand v. Hans Raj*, (3 A. L. J. 517) do not touch the question whether a mortgagee could admit a person to a tenancy, but all proceed on the view that he could do so for the period of his mortgage. Since a mortgagee could on this view admit a person as tenant without fixing any term or rent, the person admitted acquired all the rights and privileges of a tenant, *e.g.*, acquisition of occupancy or statutory rights, and now hereditary rights. Such a person was not a trespasser at the commencement, and all that can be said is that on the termination of the mortgage or theka he began to retain possession without the consent of the landholder and in contravention of the provisions of the Act then in force.

If a mortgage is usufructuary, the mortgagee is entitled to possession and management, and he alone may admit to tenancy or grant leases to others. But as not infrequently happens, the mortgagee grants the property mortgaged to the mortgagors under a lease or theka, with powers of full owner, and then the mortgagor or thekadar may like a prudent man let in tenants or grant ordinary leases on adequate terms. But this power can be exercised only during the continuance of the lease or theka. Once the mortgagor lessee or thekadar is ejected or his lease or theka ended, his power to let or admit tenants disappears and any person let in as tenant thereafter by the mortgagor is not an admitted tenant, but a trespasser *vis-a-vis* the mortgagee,<sup>1</sup> and the fact that the mortgagee has recognised as tenants other persons similarly admitted does not affect the position in any way.

Generally a thekadar (or mortgagee) lost all power to admit tenants on the termination of his theka (or mortgage),<sup>2</sup> and if his power to create tenancy or fresh tenancy was conditional on the owner's consent (and the person admitted knew of it) which was not obtained, a person admitted without such consent did not become a tenant of the owner on the termination of the interest of the person admitting.<sup>3</sup>

(iv) Any person holding in good faith as a cultivating ryot under a temporary manager, proprietor, Hindu widow or even a lease-holder was deemed to be a tenant of the owner.<sup>4</sup> In this case a person admitted as tenant in the ordinary course of management by a Hindu widow in possession was held to be a tenant of the reversion and he could acquire occupancy rights by pre-emption, and the reversioners were held not entitled to challenge such acquiescence as beyond the legitimate acts of a Hindu widow.<sup>5</sup>

<sup>1</sup> *Krishna Sihal v. Kunwar Sen*, XVII U D 205=1936 R. D. 339. The head note of this case in the U D is inaccurate.

<sup>2</sup> *Murari Lal v. Debi Singh* B R. 8 of 1909.

<sup>3</sup> *Muhammad Abdul Hasan Khan v. Dukh Miran Pal*, III U. D. 229.

<sup>4</sup> *Narain Singh v. Ganour Singh*, 3 R. and Cr. L. J. 91.

<sup>5</sup> *Muhammad Husain Khan v. Chaturbhuj*, V U. D. 121=3 L. R. Rev. 43.

A Hindu widow could not grant a valid perpetual lease,<sup>1</sup> but such a lease if granted was only voidable and not void, and the lessee until the avoidance of the lease was not a trespasser. He could be ejected as a tenant.<sup>2</sup> The lease did not automatically come to an end with the widow's death, but some proceeding had to be taken to get over its effect.<sup>3</sup>

The reversioner could after the widow's death sue to eject the lessee without getting a previous civil court declaration as to the invalidity of the lease,<sup>4</sup> and he could sue in a civil court to eject the lessee as a trespasser.<sup>5</sup> This view is not reconcilable with the Board's view in V U. D. 588. She could however grant a perpetual lease for legal necessity<sup>6</sup> which has to be proved; she could not grant occupancy rights in her late husband's *sir*.<sup>7</sup> A grant by her of occupancy or grove rights in the ordinary course of management over a small area was held binding on reversioners.<sup>8</sup>

A perpetual lease granted by a Mahomedan mother as guardian of her minor son, though not binding on the son, creates a tenancy, because the manager of a *zamin-dari* has power to let agricultural land.<sup>9</sup>

A *lambardar* may let in a tenant at fair and economic rates, even during the pendency of a partition suit between him and his brother.<sup>10</sup> But if he had no power to grant a particular lease. *e.g.* confer occupancy rights or create a tenancy that he did without the consent of his co-sharers, the grant is void even as against himself and he may join the others in a suit to eject the grantee.<sup>11</sup>

It was also held that a *lambardar* by granting a perpetual lease (such lease being held to amount to conferral of occupancy rights) without the consent of his co-sharers at least admitted the lessee to a tenancy even

<sup>1</sup> *Chauhan v. Ram Sarup*, 3 R. and Cr. L. J. 269; *Jumna Prasad v. Dwarika*, 6 L. R. Rev. 3=11 R. and Cr. L. J. 49=1925 R. C. 6=VI U. D. 312.

<sup>2</sup> *Chauhan v. Ram Sarup*, 3 R. and Cr. L. J. 269.

<sup>3</sup> *Hazari Lal v. Naurangi Lal* V U D 583,=4 L. R. Rev. 334=10 R. and Cr. L. J. 17=1923 R. C. 483.

<sup>4</sup> *Raj Rup Kuar v. Kandhya* 47 All. 2=22 A. L. J. 846=1924 A. L. R. All. 785=82 I. C. 238=VI U. D. (H. C.) 292=5 L. R. Rev. 313=1924 R. C. 460=11 R. and Cr. L. J. 12=9 R. D. 341 on appeal from *Kandhya v. Raj Rup Kuar*, 1923 R. C. 341=5 R. D. 29.

<sup>5</sup> *Ram Prasad v. Fateh Singh*, VII U. D. (H. C.) 220=7 L. R. Rev. 291.

<sup>6</sup> *Anrudh Rai v. Parmeshri Prasad Narain Singh*, VIII U. D. 27=8 L. R. Rev. 156=1927 R. C. 157.

<sup>7</sup> *Madho v. Ratan Singh* VII U. D. 87=8 L. R. Rev. 318.

<sup>8</sup> *Umrao Singh v. Mahadeo Prasad*, VII U. D. 26=7 L. R. Rev. 205=12 R. and Cr. L. J. 237=1924 R. C. 254, following *Hulus Singh v. Jit Singh*, I U. D. 218=25 I. C. 177.

<sup>9</sup> *Tahad Ali Khan v. Israr Ullah*, 1938 A. L. J. 1110.

<sup>10</sup> *Ram Ghulam v. Collector of Banda*, 1938 A. L. J. (B. R.) 20.

<sup>11</sup> *Shiva Narain v. Kali Charan*, XVI U. D. 456.

though the rent reserved was uneconomic.<sup>1</sup> In the case followed, i.e., B. R. 3 of 1933, it was held that the trustee of a temple could not at all confer occupancy rights under section 17 of the Act of 1926, and if he did so for a heavy premium and low rent the person admitted was not a person holding without title at least until the premium was refunded.

(n) Questions have often arisen as to a mortgagor's power to admit tenants or grant leases after the execution of a mortgage by him. If the mortgage was simple or by conditional sale, and not with possession, the ordinary powers of management, including the power to admit tenants and to grant prudent leases remained with him until the mortgage decree<sup>2</sup> and the mortgagee on foreclosure or purchase or any auction purchaser under the mortgagee's decree for sale, could not treat the person admitted or let in as trespasser. But a long lease in favour of a relative on very favourable terms as to rent executed after the passing of decree for sale under the mortgage was regarded as a fraud on the rights of the mortgagee and invalid as against the purchaser under the mortgagee's decree for sale.<sup>3</sup> The member of the Board was also inclined to the view that the lease having been passed during the pendency of an appeal from the decree and of execution proceedings on the mortgage was void under section 52, Transfer of Property Act, and he relied on *Thakur Prasad v. Gaya Sahu*.<sup>4</sup>

In another case it was held that where after a simple mortgagee has obtained a decree for sale in respect of a zamindari share the mortgagor and his co-shrers conspired to defeat his rights by passing a lease of the entire zamindari including the share mortgaged, the mortgagee on purchasing the property under his mortgage decree could avoid the lease under section 52, Transfer of Property Act by proper proceedings in Civil and Revenue Court.<sup>5</sup> and that a mortgagor could not, while the decree for sale on his simple mortgage was being executed, for an inadequate rent and a substantial cash premium for him, grant a valid permanent lease that would bind the mortgagee or the auction-purchaser.<sup>6</sup> These cases do not touch the right of a mortgagor to admit a tenant with all the legal consequences and incidents involved

<sup>1</sup> *Kharag Singh v. Ishri Singh*, XIX U. D. 133=1938 R. D. 325, following *Ram*

<sup>2</sup> *Kumar v. Sri Hanumanji*, B. R. 3 of '93=XIV U. D. (B. R.) 25=14 L. R. Rev. 353

<sup>3</sup> *Chhab Nath v. Baldeo*, XV U. D. 227=15 L. R. Rev. 342; *Aziz Fatma v. Mukunda Lal*, 16 R. D. 597; *Chheda Lal v. Jiva Ram*, XV U. D. 413=16 L. R. Rev. 31.

<sup>4</sup> *Monga v. Hoshnar Singh*, IV U. D. 303; *Ram Das Singh v. Udit Narain Singh*, XX U. D. 189=1939 A. L. J. (B. R.) 53.

<sup>5</sup> 20 All. 350

<sup>6</sup> *Abdul Mughni Khan v. Parkhunda*, 1936 A. L. J. 1256=1936 A. I. R. All. 661=1936 R. D. 303=XVII U. D. (H. C.) 191.

<sup>7</sup> *Jamoon v. Chakradhar Jyoti*, 1936 A. L. J. 1277.

A lease in fraud of a creditor (mortgagee) is void against the creditor under section 52 or section 53 Transfer of Property Act and the creditor may, on purchase under the mortgagee decree, eject the lessee as a trespasser.<sup>1</sup>

Admission by a judgment-debtor under a simple money decree of attached land at inadequate rent with a big *nazrana* for himself was deemed to be a fraud on the creditor and voidable by him<sup>2</sup> or the auction purchaser in view of section 64 of the Civil Procedure Code. A zamindar whose interest has been attached in execution may let in a tenant in the ordinary course of management unless the *nazrana* paid is large and the rent reserved nominal, in which event a Civil Court may declare that the terms of the lease are not binding on the auction purchaser. The latter may then sue to have an adequate rent fixed<sup>3</sup> or sue in a Revenue Court to eject the lessee as a trespasser.<sup>4</sup>

A long term or even a perpetual lease by a simple mortgagor was not considered *ultra vires*.<sup>5</sup> But such a lease in favour of the wife without consideration and without consulting the mortgagee was void against him if he purchased the equity of redemption.<sup>6</sup>

The minor son of one of two brothers admitted to a holding and in possession cannot be treated as a trespasser as against the other brother in whose name alone the land in the holding has been recorded as *khud-lasht* after the death of the minor's father three years before.<sup>7</sup>

(vi) A pre-emptor's title to the property pre-empted dates from the time when after the decree of pre-emption in his favour he pays the price into court. Until then, the vendee remains the owner. An admission to tenancy by the vendee made *without mala fide* in the ordinary course of management before or during the pendency of the suit or after decree but before the deposit of the price will make the person admitted a tenant, although a long lease or conferral of occupancy rights may not bind the pre-emptor.<sup>8</sup> The learned members observed, "It is as impossible to lay down that all the acts of a temporary owner are binding on the ultimate owner as that none of them are binding. Acts done honestly in the ordinary course of business could be binding, but when a definite accusation of collusion is made an enquiry is at any rate necessary."

<sup>1</sup> *Ranched v. Beni Madho* 15 L. R. Rev. 445=XV U. D. 283; *Gibi Ram v. Banwari Lal* XV U. D. 284-15 L. R. Rev. 447, *Ram Narain v. Gokul Chund*, XVII U. D. 75.

<sup>2</sup> *Nathu Lal v. Dal Chand*, XV U. D. (H. C.) 135.

<sup>3</sup> *Dal Chand v. Nathu Lal*, 1936 A. L. J. 665=XVI U. D. (H. C.) 697=1935 R. D. 553.

<sup>4</sup> *Brij Behari Maharaj v. Bohra Fateh Chund*, XVI U. D. 244=1936 R. D. 373.

<sup>5</sup> *Haidar Ali v. Paras Ram*, V U. D. 493-4 L. R. Rev. 309=1923 R. C. 54.

<sup>6</sup> *Mantura v. Jag Mohan Singh* XII U. D. (H. C.) 73-12 L. R. Rev. 67=15 R. D. 80=8 O. W. N. 131.

<sup>7</sup> *Suraj Singh v. Munshi Singh*, XX U. D. 233=1939 R. D. 265.

<sup>8</sup> *Jagan Nath Singh v. Dwarka Prasad*, XI U. D. 192.

(vii) This is the rule to be observed in all cases where a person *A* in possession who is not, or is ultimately found to be not, the owner, admits *B* to tenancy. Many cases of this type have arisen in Bengal and there the rules seem to be that if *B* took the land in good faith from *A*, believing him to be the true owner, he became a tenant,<sup>1</sup> but if he had no such belief and did not act in good faith<sup>2</sup> or if *A* knew that he was not the owner and was only a trespasser<sup>3</sup> he did not become a tenant. In these provinces, the same rules have been applied. In *Lekhraj Ram v. Inder Sen*,<sup>4</sup> a perpetual lease granted by one in *A*'s position was held not to be binding on the true owner as a lease but to have made him a non-occupancy tenant, that is, a person admitted to a tenancy.

Where a suit brought against a person *B* in possession was decreed in favour of the Collector as representing the Court of Wards and the Collector took possession pending an appeal from the decree and admitted a person *A* as tenant of some part of the land, and on appeal the decree was reversed and *B* became entitled to be restored to possession, it was held that *A* could not set up statutory tenancy as against *B*, as the Collector had been only in temporary wrongful possession.<sup>5</sup> There could be no question of *mala fides* in the act of admission, nor that at that time the Collector and not *B* was entitled to admit. Hence so far as the learned judge decided on section 19, Agra Tenancy Act, his decision is open to objection. It may be that section 144, Civil Procedure Code, justifies the decision.

The legal position of a person admitted as a tenant by the owner whose title was in dispute at the time came up for consideration in a case.<sup>6</sup> There *A* was the auction-purchaser of a property under a money decree. At the time of the auction sale a suit for sale of the property on a mortgage was pending. A sale decree was passed and *A* received notice of the intended sale under the decree. He, then, at an inadequate rent and to harm the mortgagee let plots of land to *B* for 20 years. The property was sold under the mortgage decree and purchased by *C*, who sued to eject *B* as a trespasser. It was held that the lease being *pendente lite* was bad against *C* under section 52, but as at the time *A* was the only person entitled to admit tenants, *C* at any rate was a tenant who became a statutory tenant when the Tenancy Act of 1926

<sup>1</sup> *Azim Sardar v. Ram Lal*, 25 Cal. 324; *Royendra Nath v. Nanda Lal*, 18 C. W. N. 1206; *Nando Kamar v. Banomali*, 29 Cal. 371; *Bimod Lal Prakash v. Paramanik*, 20 Cal. 708.

<sup>2</sup> *Peary Mohan v. Radhika Mohan*, 8 C. W. N. 315.

<sup>3</sup> *Upendra Narain v. Protap Chandra*, 31 Cal. 703; *Newas Khan v. Ram Jadu*, 34 Cal. 109.

<sup>4</sup> 111 U. U. 263.

<sup>5</sup> *Sukhan Singh v. Uma Shankar*, 1934 A. L. J. 1229—1935 A. I. R. All. 65=XV U. D. (H. C.) 266—18 R. D. 502—152 I. C. 663.

<sup>6</sup> *Aziz Fatma v. Mukund Lal*, 1932 A. L. J. 572=XIV U. D. (H. C.) 14=14 L. R. Rev. 1.

came into operation, and since C accepted his position as statutory tenant and did not claim any rights under the lease, he was not a trespasser.

A gift was made by A to B which was voidable by A, who commenced a suit to avoid it. B then executed a perpetual lease of certain plots of land, some of which were comprised in the suit and others which belonged jointly to A and B equally. There had been a private partition or arrangement by which A and B took a defined area or part, and C the other co-sharer took her third share in the rest of the area. The gift made B the owner of two-thirds, i.e. the defined area allotted to A and B. A's suit was dismissed by the trial court and an appeal from the decision was pending when the perpetual lease was made. The appeal was decreed and A's gift was avoided, and he was awarded possession, over the property, including his third share in the plots leased. A's heir, after his death, sued to avoid the lease and to recover possession for self and B from the lessee, as trespasser, the lessor and C being impleaded. The lease was alleged to be invalid as it had been made *pendente lite*, and as B alone was not competent to grant a lease of land belonging to A and himself. The defence was a general traverse and also that C had, at the least, been admitted as a tenant in respect of B's share, if not in respect of the share of A also. At the date of the grant of the lease the Act of 1926 had not come into force, and C could on this plea become a non-occupancy tenant and afterwards a statutory tenant when the Act came into effect, the litigation in appeal being still pending in the Privy Council. The High Court had decreed A's suit before 1926. It was held by a Bench of the Court:—(i) that B's lease could not affect A's share as B was a trespasser and had notice of the attack on his right by A, and presumably could not be said to have acted in an honest belief that he was the owner, (ii) that it could not affect even B's interest as the land must be taken to have belonged to A and B jointly at the date of the lease, and section 194 of the Tenancy Act of 1901 then in force prevented one of several co-sharers from leasing joint property.<sup>1</sup> As to the first point one may submit that since C's plea showed that he would have been content with the status of a statutory tenant, and B was the only person then who could have admitted a person to tenancy, C at any rate became a non-occupancy tenant at the date of the lease. On the decision by the High Court, A became entitled to eject C as a non-occupancy tenant but refrained from doing so. He and his heir allowed C to hold the position of tenant on the 7th of September, 1926 when the Tenancy Act of 1926 came into force, and C therefore became a statutory tenant and therefore it was too late in 1933 when the present suit was filed to eject C during his lifetime or his heir for five years thereafter. The judgment does not show whether C was dead at the date of the suit or whether five years had elapsed since his death when the suit was instituted. There was no finding that the lease was for an inadequate rent or that C had been guilty of any fraud

<sup>1</sup> *Lachminia v. Makula*, 1938 A. L. J. 358=1938 A. I. R. All. 441=XIX U. D. (H. C.) 58.

or collusion in obtaining it. The decision is therefore unsatisfactory so far as A's one-third was concerned. It is much more unsatisfactory as to B's one-third, because B was at the time of the lease the only owner of it and had been declared to be so by the trial Court. The fact that as a result of the litigation someone else *viz*, A, was declared to be part owner would not bring on the application of section 194, which only dealt with existing circumstances and not with possible contingencies.

The learned judges relied upon certain cases<sup>1</sup> and distinguished others which tended to militate against their views. In neither of these cases, the lessor or person admitting was at the time the sole ostensible person who could have admitted a person to tenancy, but was one of several persons entitled to do so. In the first case, the lessor was a mere co-sharer along with others, and in the second case, the lease had been granted by the agent of one of three co-sharers.

That leases by one or some of the co-sharers or co-owners does not create a tenancy has been decided in several other cases:—

*Nar Singh Dayal v. Bishwa Nath Lal*,<sup>2</sup> *Banwari Lal v. Ram Ratan*,<sup>3</sup> *Bhagirath v. Sita Ratan*,<sup>4</sup> (Oudh case in which the question whether a tenancy arose at all was not raised or discussed), *Tapesra v. Durl Nath*,<sup>5</sup> *Tajammul Husain v. Kandhzi Lal*,<sup>6</sup> *Maula Khan v. Mamnoon Ahmad Khan*,<sup>7</sup> *Pirithi Singh v. Beda*,<sup>8</sup> *Ram Dayal v. Budh Singh*,<sup>9</sup> *Ganeshi Lal v. Bhabuti Singh*,<sup>10</sup> *Mungali v. Bhawan*,<sup>11</sup> *Raghu Nath Singh v. Mohan Singh*.<sup>12</sup>

Cases to the contrary are:—

*Murlidhar v. Maula Bux*,<sup>13</sup> *Mathura Prasad v. Chotku Singh*,<sup>14</sup> *Piary Lal v. Baldeo Prasad*,<sup>15</sup> (where one of two proprietors who happened to be the lambaridar granted a lease of some joint land to the former half proprietor whose interest had passed by pre-emption to the appellant, and the lessee was held not to be a trespasser), *Ram Charan Naik v. Gangoo*,<sup>16</sup>

<sup>1</sup> *Kunwar Singh v. Abdur Ali Khan*, 1928 A. I. R. All. 525=IX U. D. (H. C.) 105; *Panchanan Banerji v. Anand Prasad Pandey*, 1932 A. L. J. 477=54 All. 738.

<sup>2</sup> XIX U. D. 190=1938 R. D. 598.

<sup>3</sup> X U. D. (H. C.) 234.

<sup>4</sup> VIII U. D. (H. C.) 143.

<sup>5</sup> III U. D. 80=18 I. C. 281.

<sup>6</sup> B. R. 5 of 1913.

<sup>7</sup> XIV U. D. 697=5 R. D. 397.

<sup>8</sup> III U. D. 355.

<sup>9</sup> XIX U. D. 131=1938 R. D. 323, referring to *Sarjupari Pathala v. Jaiwan*, 16 R. D. 51=XII U. D. 24.

<sup>10</sup> XVIII U. D. 10=1937 R. D. 12.

<sup>11</sup> XIX U. D. 119=1935 R. D. 269.

<sup>12</sup> XVI U. D. 97=16 L. R. 170.

<sup>13</sup> III U. D. 57 overruled in V U. D. 33.

<sup>14</sup> XIII U. D. 326.

<sup>15</sup> III U. D. 137=4 R. and Cr. L. J. 287.

<sup>16</sup> III U. D. 183.



*Hardwa v. Hardwari*,<sup>1</sup> *Ram Bahadur Singh v. Ram Niranjani*,<sup>2</sup> *Ghasita v. Aman Singh*,<sup>3</sup> relying on *Ram Dulari v. Balak Ram*.<sup>4</sup>

A co-sharer has no right to make a gift of his share of *khudkasht* which belongs to all the co-sharers. The donee may become entitled to proprietary rights, but if he takes possession he does so as a trespasser against them.<sup>5</sup>

In the distinguished cases, the rights of a statutory tenant or tenant were recognised in spite of the validity of the leases.<sup>6</sup>

In these cases, permanent leases had been granted by managers of joint Hindu families but not for any purpose or object binding on the family, and it was held that though the leases as permanent leases were void as being alienations invalid under the Hindu law, the lessee must be deemed to have been admitted to tenancy by the manager, the person entitled to let land in the ordinary course of management. In the case in 1935 A. L. J. 645, the lease had been granted by the manager of an endowed property, and applying the same principle it was ruled that though it was invalid as a permanent lease, the lessee was not a trespasser but a tenant admitted by the person authorised.

A permanent lease by the mahant of a *muth* after taking a year's rent as premium or *nazrana* was held by the Board not to be a permanent alienation of land but to be a "lease given in the ordinary incidence of estate management for the benefit of the estate as a prudent landlord could give" and therefore not invalid.<sup>7</sup>

There was a sequel to the case of *Basdeo Narain v. Muhammad Yusuf* (51 All. 285). After the decree in the Munsif's Court ejecting the permanent lessee under the lease granted by the manager, all the members of the family granted a permanent lease of the same land to another, *B*. The ejected permanent lessee had appealed and the High Court held that though not a permanent lessee he was a tenant let in by an authorised person. Then he applied for restoration of possession which was granted in spite of *B*'s objections. *B* then sued for a declaration that he was the tenant of the land. It was held that the lease to *B* was invalid under section 52, Transfer of Property Act, and did not make *B* a tenant.<sup>8</sup>

<sup>1</sup> III U. D. 444.

<sup>2</sup> IV U. D. 699—36 L. R. Rev. 165.

<sup>3</sup> XX U. D. 247.

<sup>4</sup> B. R. 7 of 1920.

<sup>5</sup> *Ganpat Rai v. Jagdeo*, XIX U. D. 247—1938 R. D. 677.

<sup>6</sup> *Basdeo Narain v. Muh. Yusuf*, 51 All. 285—1928 A. I. R. All. 617—1929 A. L. J. 1111—IX U. D. (H. C.) 299—9 L. R. Rev. 321—115 I. C. 491; *Aziz Fatma v. Mukund Lal*, 1932 A. L. J. 572; *Mauladad Khan v. Radha Kant*, 1935 A. L. J. 645—1935 A. I. R. All. 629—XVI U. D. (H. C.) 282—1935 R. D. 235; *Tapesar Singh v. Chhabhi*, 1933 A. I. R. All. 634—XIV U. D. (H. C.) 63—17 R. D. 185—14 L. R. Rev. 230.

<sup>7</sup> *Raghwa Nandan Madhavi Swami v. Ram Newaz*, 14 L. R. Rev. 591.

<sup>8</sup> *Asghar Ali v. Muhammad Yusuf*, XII U. D. 207—12 L. R. Rev. 223.

In all these decisions as to leases by managers creating at any rate a tenancy, there is the obvious objection that the court is making a new contract for the parties. This objection is met by the language of section 19 of the Agra Act, sections 36, 37 of the Oudh Act, and section 29 of the present Act, which only requires that a person claiming a statutory or hereditary right should be a tenant at the date of the respective Act, or be admitted to the tenancy by one who could do so. To the same effect is *Raja Ram Singh v. Ramai*.<sup>1</sup>

(ix) If a co-sharer was entitled to exclusive possession of the land leased or let by him, no other co-sharer could question the validity of his act and the person so admitted was a tenant as against any other co-sharer or person who became entitled to its ownership.<sup>2</sup> But mere cultivation for a short time of certain land as *khudkasht* by a co-sharer does not entitle him to exclusive possession of it as against his co-sharers, and a lease granted by the former would be ineffective as against the latter,<sup>3</sup> although the lessor, if he had continued to cultivate it, may not have been liable to ejectment at the instance of the others.<sup>4</sup>

Where one of the co-sharers held a land as *khudkasht*, and on the sale of his proprietary rights, the purchaser was allowed to treat it as his own particular holding and to deal with it as such, and this position was accepted by the other co-sharers during the partition proceedings, a previous perpetual lease of the land was held binding on another co-sharer to whom a portion of it had been allotted on the partition.<sup>5</sup>

Where a part owner who cultivated some land as *khudkasht* sold his proprietary interest, the purchaser was not held entitled to take over the *khudkasht*, and to treat a person put in as tenant by the other part owner as a trespasser,<sup>6</sup> since the *khudkasht* of the vendor became the common land of all the owners, including the purchaser. This decision does not commend itself, it being against the rule generally accepted that a part owner cannot without the consent of all the owners create a tenancy.

*Khudkasht* is by usual village custom let out by the holder of it, but if two persons are holders of it, one cannot admit a tenant to it.<sup>7</sup>

Where *khudkasht* of A is on a partition allotted to B, the latter becomes entitled to it, and A becomes a tenant, if he continues to

<sup>1</sup> V U. D. 33—1922 R. C. 22.

<sup>2</sup> *Sarjupari Pathsala v. Jiawan*, XII U. D. 24.

<sup>3</sup> *Jumna v. Jrali*, 18 A. L. J. 129.

<sup>4</sup> *Sarabjit v. Ram Kumar Singh*, 19 A. L. J. 783.

<sup>5</sup> *Tej Singh v. Munshi*, V U. D. 318—4 L. R. Rev. 54—9 R. and Cr. L. J. 106; *Sarjupari Pathsala v. Jiawan*, XII U. D. 24

<sup>6</sup> *Ram Charan Naik v. Gangoo*, III U. D. 183—4 R. D. 27.

<sup>7</sup> *Ram Dayal v. Budh Singh*, XIX U. D. 131—1938 R. D. 323, referring to *Sarjupari Pathsala v. Jiawan*, XII U. D. 34

cultivate it under an agreement to pay rent,<sup>1</sup> either from the date of the agreement or of the allotment,<sup>2</sup> otherwise the partition officer cannot record *A* as a tenant.<sup>3</sup> A partition proceeding recorded that *khudkasht* of less than 12 years' standing will remain the *khudkasht* of its holder if it falls in his share, or, if it falls in another's share, he will continue to hold it as non-occupancy tenant. In the latter event, the previous holder of the *khudkasht* will not become a tenant but will be regarded as a trespasser.<sup>4</sup> A person holding a plot of land of another co-sharer as mortgagee is not its tenant, but if after partition he pays rent for it, he becomes a tenant.<sup>5</sup>

(x) The person claiming a tenancy by admission to it has to prove that the person who admitted him had the right or authority to do so,<sup>6</sup> or that a person having authority to do so, *e.g.*, the *lambardar* admitted him as tenant of joint land.<sup>7</sup>

The mortgagee of a tenant (where such a mortgage was valid) in possession was not considered to be admitted to the holding by the landholder, and if after redemption and dispossession in due course, the mortgagee from the zamindar re-entered, he was of course a trespasser<sup>8</sup> unless the mortgagor consented.<sup>9</sup>

(xi) A question then arose as to what remedies were open to co-sharers who had not granted the lease or who were not members of a joint family of which the lessor was the manager. It was held that even the lessor was not bound,<sup>10</sup> and that the other co-sharers could sue<sup>11</sup> (i) in a

<sup>1</sup> *Parmanand v. Arthu Lal*, B. R. 19 of 1910.

<sup>2</sup> *Bellar Singh v. Jafar Khan*, V U. D. 483.

<sup>3</sup> *Mahabir Prasad v. Wahid Husain*, XI U. D. 68 ; *Hawal Ras v. Har Prasad*, 45 All. 711—21 A. L. J. 634.

<sup>4</sup> *Balram Singh v. Sheo Charan Singh*, XII U. D. 41; *Bishwa Nath Panluy v. Ram Kumar*, XII U. D. 274, but see *Barj Nath v. Palakdhari*, X U. D. 209 ; *Ram Nath v. Ram Sarup*, III U. D. 374.

<sup>5</sup> *Mahadeo v. Gur Prasad*, 6 R. and Cr. L. J. 292.

<sup>6</sup> *Ram Gopal v. Kashi Prasad*, XV U. D. 249—15 L. R. Rev. 422; *Kunwar Singh v. Abdul Ali Khan*, IX U. D. (H. C.) 105.

<sup>7</sup> *Sia Dulari v. Daya Shankar*, XIV U. D. 129—14 L. R. Rev. 286.

<sup>8</sup> *Kallo v. Hanuman Prasad Narain Singh*, VI U. D. 119—5 L. R. Rev. 145—1924 B. C. 120.

<sup>9</sup> *Sheo Shankar Lal v. Chandar*, 2 U. P. L. R. (B. R.) 65—IV U. D. 145—6 R. and Cr. L. J. 225—6 R. D. 246.

<sup>10</sup> *Panchanan Banerji v. Ananta Prasad Panday*, 1932 A. L. J. 477. See *Ishri Ram v. Hazari Rai*, III U. D. 258. There, *A* and *B* owned a share in a zamindari in equal shares. *A* granted a perpetual lease of the half share of certain plots in the zamindari to *C* without *B*'s consent and then sold his zamindari interest to *D*, who got his portion partitioned off from *B*, the land covered by the lease being allotted to his portion ; *D*'s suit to eject *C* as holding under an invalid lease failed as he was as much bound by the act of *A* as the latter himself. The reason assigned was that the lease did not affect *B*'s interest and even if it did not bind *B*, it bound the actual lessor now represented by *D*.

<sup>11</sup> *Shiva Narain v. Kali Charan*, XVI U. D. 456—1935 R. D. 375,

civil court to eject the lessee as a trespasser, the lessor being a party to the suit, and (ii) that they need not be content with a decree for joint possession along with the lessor and the lessee,<sup>1</sup> or that (iii) they could sue for joint possession without having the lease cancelled, even though a suit for such cancellation would be time-barred<sup>2</sup> or that (iv) they could sue for a mere declaration that the lease was invalid<sup>3</sup> if they were in possession, and the lessor could join in such a suit.<sup>4</sup> If they were not in possession, a suit for a mere declaration could not have been decreed by virtue of section 42, Specific Relief Act. A difficulty would have arisen if in such a suit for possession, a competent revenue court has declared the lessee to be a tenant as in *Banwari v. Ram Ratan Pandey*.<sup>5</sup>

A co-sharer suing for cancellation or ejectment may have by his conduct estopped himself, *e.g.*, if he has all along been accepting the acts of the lessor co-sharer as binding on him and has been acting in concert with him.<sup>6</sup>

A revenue court suit under section 44 of the Agra Act (section 127, Oudh Act, or section 180 of the present Act) would bring into view certain difficulties. The lessor would be estopped from repudiating his own act and suing for ejectment<sup>7</sup> and would in most cases be unwilling to join in such a suit, and if he is not one of the plaintiffs, the suit by the other co-sharers would be bad, under section 266 of the Agra Act (section 246 of this Act).

(xii) Admission by an owner who had already parted with or lost the right and interest which entitled him to admit is no admission at all and will not bind his successor in interest.<sup>8</sup>

(xiii) Admission of a nephew as tenant by a person who subsequently became insolvent, will not make the nephew a trespasser as against the person to whom the receiver in insolvency sold the insolvent's estate, specially after the receiver had recognised the tenancy by receipt of rent paid by the person.<sup>9</sup>

<sup>1</sup> *Kunwar Singh v. Abdul Ali Khan*, IX U. D. (H. C.) 105.

<sup>2</sup> *Ib.*

<sup>3</sup> *Basdeo Narain v. Mohammad Yusuf*, 51 All. 285=IX U. D. (H. C.) 299.

<sup>4</sup> *Sukhwa v. Shiam Krishna*, XIX U. D. 122=1938 R. D. 272.

<sup>5</sup> X U. D. (H. C.) 234.

<sup>6</sup> *Raja Ram Singh v. Ram Sahai*, V U. D. 33=1922 R. C. 32.

<sup>7</sup> *Swami Dutt Rai v. Doma*, IV U. D. 221=1 L. R. Rev. 130, and the principle underlying section 108 (c) T. P. A., that a lessor guarantees that during the term of the lease the lessee shall continue in possession.

<sup>8</sup> *Kishan Prasad v. Kartara*, XVIII U. D. 263=1937 R. D. 426.

<sup>9</sup> *Durga Prasad v. Om Prakash*, XIX U. D. (H. C.) 32=1938 R. D. 49.

(xiv) An act of admission to tenancy being a bilateral contract, the person alleged to have been admitted must be the one whom the lessor meant to admit. This question sometimes arises when a lease stands in the name of a member of a joint Hindu family. See the discussion in the notes to section 34. If with full knowledge of all the facts, the lessor accepts rent from the person not meant by him to be admitted or otherwise treats him as a tenant, the relation of a landlord and tenant arises between the two. Tenant means the real and genuine tenant<sup>1</sup> and this must be borne in mind in some classes of cases. Patwaris, in order to circumvent service rules have their agricultural holdings recorded in the name of some relation, friend or dependant as tenant, with their own names, sometimes as sub-tenants. See note 23 to section 3(22) at page 36.

In another class of cases, in order to prevent the acquisition of superior tenancy rights by the actual cultivators, zamindars had a large area of land entered as the tenancy holding of some female or other relation with the cultivators shown as sub-tenants. See note 23 to section 3(22) at pages 36-37.

(xv) A partner taken in by an admitted tenant is not admitted to the tenancy by the landlord unless he assents to the partner being also a tenant. This was the trend of rulings under the Act of 1901. See note (iii) to section 3 (23) at pages 45-46.

Recognition of the partner as a co-tenant with the<sup>2</sup> original tenant for consideration was sufficient to make him a co-tenant; so obtaining enhancement of rent on the condition that the outsider should be a co-tenant.<sup>3</sup> But a suit for enhancement of rent against the tenant and his partner did not amount to the recognition of the partner as co-tenant;<sup>4</sup> nor did a mere receipt of rent from him.<sup>5</sup>

The proviso to section 33 (2) shows that a partner taken by a tenant is not a co-tenant unless he has been recognised as such by the landholder.

When a tenant associated in his holding persons other than his heirs, and the landholder issued receipts of rent to them as joint tenants, the landholder was not estopped after the tenant's death from suing the associated persons as trespassers.<sup>6</sup>

(xvi) Admission implies a valid and legal admission. A tenant cannot be admitted to a holding while another person is still the tenant,

<sup>1</sup> *Baldeo v. Kanhai*, XI U. D. 62.

<sup>2</sup> *Munshi Madho Lal v. Sahebzada Khan*, IV U. D. 306

<sup>3</sup> Per Ferard S. M., in *Ramji Mal v. Abdul Hai*, III U. D. 482

<sup>4</sup> See *Lachmania v. Nageshar Prasad*, XVIII U. D. 258=1937 R. D. 406.

<sup>5</sup> *Abdul Bari v. Raghu*, XIV U. D. 28=14 L. R. Rev. 84.

<sup>6</sup> *Udho Singh v. Dori Lal*, IV U. D. 533=2 L. R. Rev. 102=7 R. and Cr. L. J. 193; *Munna v. Baran Kumari*, XIV U. D. 169.

and has not been got rid of in a lawful manner.<sup>1</sup> But if the person *A* whose name is entered as tenant has really nothing to do with the holding, the landholder may lease the land to another person *B* and the fact that the entry showing *A* as the tenant with *B* as sub-tenant is made and continued after the lease to *B*, either by mistake or through trickery will not affect the position of *B* as tenant.<sup>2</sup> An agent cannot readmit an ejected tenant after the landholder has admitted a tenant who is in possession.<sup>3</sup>

(xvii) Fraud vitiates a contract, and a contract may be made for *A* by his agent. If the agent and the person admitted have practised fraud and deception upon *A*, the latter may refuse to recognise as tenant the persons admitted by the agent and treat him as a trespasser,<sup>4</sup> even though rent has been paid to and received by the agent and accounted for by him.

An ejected tenant readmitted dishonestly by the zamindar's *karinda* in excess of his authority is not admitted to the tenancy,<sup>5</sup> for in such a case of *karinda*'s authority to readmit cannot be presumed specially in a formally managed estate in which acceptance by the landholder's consent is insisted on.<sup>6</sup>

An admission, though under a misapprehension, may none-the-less be a good admission.<sup>7</sup>

(xviii) Admission of a person to tenancy who is not the heir of a deceased tenant under a misapprehension of facts is not good admission to the tenancy,<sup>8</sup> see note (xxi) *infra* at page 212.

(xix) Admission to tenancy by an authorised agent generally and in the absence of fraud or collusion creates a tenancy. But if the owner insists on personal acceptance of a tenant by him, an agent's admission

<sup>1</sup> *Sheo Prasad v. Kashi Ram*, XVI U. D. 179 ; *Jat Devi v. Tota Ram*, XVII U. D. 70 ; *Samharu v. Gaya Din*, XVII U. D. 132.

<sup>2</sup> *Buldeo v. Kanhai*, XI U. D. 62=11 L. R. Rev. 80.

<sup>3</sup> *Dudh Nath v. Jag Lal*, XIII U. D. 90=12 L. R. Rev. 356 ; *Chandi v. Paragi*, XIII U. D. 44.

<sup>4</sup> *Jammu Singh v. Mahabir Prasad*, V U. D. (H. C.) 49=8 R. and Cr. L. J. 179=1922 R. C. 184.

<sup>5</sup> *Bharat Singh v. Har Narain*, IX U. D. 127=9 L. R. Rev. 235.

<sup>6</sup> *Harakh Chand v. Mahaval*, XV U. D. 81=15 L. R. 296.

<sup>7</sup> *Bhaya Kandhai Prasad v. Mathura*, XII U. D. 266, but see the cases cited under the next note (xx) *infra*.

<sup>8</sup> *Rani Kanis v. Mahabirji*, B. R. 1 of 1932=XIII U. D. (B. R.) 12=13 L. R. Rev. 234 ; *Rani Kunwar v. Sri Thakurji*, XIII U. D. 97 ; *Mahabir Chaubey v. Sahab Din*, XIII U. D. 113=13 L. R. Rev. 187 ; *Nath Chandrawat Trust v. Mir Ali*, XIII U. D. 74=13 L. R. Rev. 114 ; *Hatim Husain v. Prag Singh*, XII U. D. 73=12 L. R. Rev. 134 ; *Mansoor Husain v. Bhulal*, XV U. D. 118=15 L. R. Rev. 142 ; *Muh. Mehdi v. Ram Dei*, 12 L. R. Rev. 31 ; but see *Bhaya Kandhai Prasad v. Mantura*, XI U. D. 266.

without such acceptance is no good.<sup>1</sup> This often happens in large formally managed estates. Hence acceptance of rent by an agent in such a case is not proof of admission to tenancy by the zamindar.<sup>2</sup>

Where in a big estate, like that of the Maharaja of Benares, the subordinates can make only temporary arrangements for letting which becomes *pucca* only on the sanction of the owner, and such sanction is not given to a particular letting, the person so let in by one of such subordinates is not a tenant.<sup>3</sup>

A permanent lease executed by the son of a zamindar, without any *nazrana* and providing against enhancement or abatement of rent, without express authority from the father is not binding on the latter<sup>4</sup>; but if the son has a power of attorney from his father authorizing him to admit tenants and he admits in the ordinary way, a tenancy is created.<sup>5</sup>

A lease granted by the manager of the Court of Wards without any term is not binding on the Court of Wards.<sup>6</sup> Where on the death of an occupancy tenant, the Court of Wards in charge of his estate makes a kind of *kachcha* settlement of the land with certain persons to ensure recovery of rent, there is no admission of these persons to tenancy, as the old tenancy has not been surrendered or given up.<sup>7</sup>

A *ziladar* has no power to grant leases.<sup>8</sup>

(æ) The consideration for the contract of admission to tenancy is rent, but its actual payment is not a *sine qua non* of the accrual of tenancy.<sup>9</sup> Nor is actual use of the land let for agricultural purposes.<sup>10</sup>

The rent may be definitely fixed at the time of admission, or there may be an express or tacit understanding that some rent would be paid, or that no rent would be payable at all (in which event a rent free-grant may arise, or nothing may have been said about the payment of rent (in which case there would be an implied contract to pay), or a person may simply squat on another's land, in which rent there is no tenancy initially.

<sup>1</sup> *Surajpal Singh v. Munshi Lal*, XVII U. D. 62.

<sup>2</sup> *Harakh Chand v. Mahaval*, XV U. D. 81=15 L. R. Rev. 296, relying on *Bharat Singh v. Har Narain*, IX U. D. 127 and *Ahmad Ali v. Hamid Khan*, XII U. D. 14=15 R. D. 394 which discuss how far a *karinda's* action in admitting tenants and the acceptance of rent bind a landholder. See *Ram Rati v. Kesho Prasad Singh*, XI U. D. 111 for another similar case.

<sup>3</sup> *Parbhu Narain Singh v. Pabbar Pandey*, XII U. D. 307=15 R. D. 738.

<sup>4</sup> *Raghubir v. Ashraf Ali*, XVI U. D. 305=1937 R. D. 470.

<sup>5</sup> *Chitter Singh v. Shyam Lal*, XV U. D. 278=15 L. R. Rev. 441.

<sup>6</sup> *Chaturbhuj Singh v. Awagarh Estate*, III U. D. 263.

<sup>7</sup> *Samharu v. Gaya Din*, XVII U. D. 132.

<sup>8</sup> *Birwa Mahnon Estate v. Bala Prasad*, IV U. D. 353.

<sup>9</sup> *Mazhar Ali v. Ramgat Singh*, 18 All 290; *Gauri Shankar v. Jhanda*, V U. D. 578=4 L. R. Rev. 372=7 R. D. 371=10 R. and Cr. L. J. 5=1923, R. C. 274.

<sup>10</sup> *Rajman v. Ganga Din*, VII U. D. 12=7 L. R. Rev. 195=1926 R. C. 289.

Mere casual payment of rent for one year to a co-sharer will not make a person who is not a tenant a tenant.<sup>1</sup>

Failure to collect rent does not destroy the relation of landholder and tenant which has once been established.<sup>2</sup>

(xxi) *Proof of admission*—The person who alleges admission to tenancy must prove that fact.<sup>3</sup> This may be done by direct evidence oral or documentary, e.g., a patta or kabuhat showing that A admitted B to the tenancy and B accepted that position, or by circumstantial evidence. The uncorroborated statement of a patwari that a person was admitted to the occupation of a holding the tenant of which had died heirless may not be deemed sufficient evidence.<sup>4</sup>

A lease or sub-lease for a term exceeding one year or from year to year may be made only by a registered instrument,<sup>5</sup> or by attestation.<sup>6</sup> Where a registered lease is required, proof of such lease must be forthcoming. A registered lease in favour of A is for 100 bighas only, but he actually holds 200 bighas. A lease of the extra 100 bighas has to be proved. If the extra land was meant to be included in the original lease, oral evidence of such inclusion is barred by section 92, Evidence Act, and if the inclusion was by a subsequent agreement, provision (4) to section 92, Evidence Act, will not apply and oral evidence of the inclusion is inadmissible.<sup>7</sup>

Where a tenant on the basis of an unregistered lease or plain paper claimed admission to the tenancy of two plots at a certain rent and the landlord denied his admission to one of them at the rent named, and the lease was not proved, no inference could be drawn from the so-called lease, and the tenant was held not to be the tenant of the plot denied by the landlord.<sup>8</sup>

A and B, two brothers, own a 1 anna 8 pie share in a patti of 6 annas. C, who owns an 11 pie share in the patti, sells to A his proprietary rights and the *sir* and *khudkasht* appertaining to his share but does

<sup>1</sup> *Gulal v. Ghasita*, V U. D. 315=4 L. R. Rev. 96.

<sup>2</sup> *Rameshar Dat v. Shyama Kumar Singh*, I U. D. 526=27 I. C. 102; *Ashraf Ali v. Bakhtawar*, V U. D. 314=14 L. R. Rev. 14=9 R. and Cr. L. J. 69.

<sup>3</sup> *Nath Chandrawat Koer Trust v. Mir Ali*, 13 L. R. Rev. 114=XII U. D. 74; *Sheo Prasad Lal v. Gudar*, XII U. D. 166=12 L. R. Rev. 12; *Khem Chand v. Budha*, XIX U. D. 265=1938 R. D. 938; *Kamalpat v. Girdhari Ram* III U. D. 258; *Bhagirathi v. Balram Das*, XII U. D. 194=12 L. R. Rev. 305; *Rikh Deo Rai v. Ganga Prasad*, 1933 A. I. R. All. 825=XIV U. D. (H. C.) 93=14 L. R. Rev. 632=17 R. D. 772; *Ram Dayal v. Pahlad Singh*, XVI U. D. 102; *Jagdish Mani v. Kandhari*, X\II U. D. 227=1926 R. D. 330.

<sup>4</sup> *Mushtaq Husain v. Ganga Dei*, 12 L. R. Rev. 87.

<sup>5</sup> Sections 42, 56.

<sup>6</sup> Section 57.

<sup>7</sup> *Manisa Bano v. Jhabbua Singh*, XII U. D. 222=15 R. D. 576.

<sup>8</sup> *Khummi Singh v. Durga Kunwar*, 12 L. R. Rev. 180=15 R. D. 519.

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not claim any exproprietary rights, and the *sir*-character is lost. The sale-deed does not refer to any *khalsa* land and the specific plots of *sir* and *khudkasht* are expressed to be sold. *A* sells his proprietary rights and these specific plots to *D*, and *D* gives a lease of those plots to *A*, and then sells his rights to *E*. On *A*'s sale to *D*, *A* did not of course become the exproprietary tenant of the plots which had been *C*'s *sir*. Hence the lease given to him merely amounted to his admission as tenant.<sup>1</sup>

Payment by *B* of rent and receipt of the money as rent by *A* is as a rule good evidence, but not always.<sup>2</sup>

Whether receipt of rent from a person in possession amounts to admission to tenancy depends on circumstances. Such receipt under a mistaken impression that he was entitled to hold as heir of a deceased tenant does not prove admission.<sup>3</sup>

Mere acceptance of rent from an ejected tenant is not necessarily evidence of a contract of tenancy.<sup>4</sup>

Mere acceptance of rent (presumably any agent) is not enough to prove admission unless the landholder was personally aware of the facts.<sup>5</sup>

Credit entries of payment of rent made by a patwari in his *siaha* not signed by the zamindar are inadmissible in evidence to prove admission of the alleged payer to the holding.<sup>6</sup>

If *B* held a tenancy land by derivative right, *e.g.*, in virtue of a sub-lease or mortgage from the tenant, paying to the zamindar the rent due from *A*, and after the tenant disappeared, continued to pay the rent, receipt of such rent by *A* may or may not be good evidence of admission of *B* by *A* to the tenancy in chief. Unless it is shown that *A* received the rent from *B* (mortgagee or sub-tenant) after the disappearance of the tenant on his own account and not on account of the tenant, the receipt will not be evidence of the admission of *B* to the tenancy.<sup>7</sup> So where the amount due under a decree for rent was after some years of disappearance of the tenant paid up by the sub-tenant to avoid ejectment, it was held

<sup>1</sup> *Binda Prasad v. Sheo Dulari*, XII U. D. 240.

<sup>2</sup> *Shahid Husain v. Harbans*, XVIII U. D. 134=1937 R. D. 161.

<sup>3</sup> *Mahabir v. Jagan Nath Bakhsh Singh*, 14 L. R. Rev. 898=10 O. W. N. 459=17 R. D. 1120=XIV U. D. 507.

<sup>4</sup> *Radhey Mohan Lal v. Richhpal Singh*, XX U. D. 75=1938 R. D. 788.

<sup>5</sup> *Ram Rati v. Kesho Prasad Singh*, XI U. D. 111; *Harakh Chand v. Mahaval*, XV U. D. 81=15 L. R. Rev. 296; *Ram Sarup v. Kundan*, XI U. D. 241=15 L. R. Rev. 365; *Bharat Singh v. Har Narain*, IX U. D. 127; *Ahmad Ali v. Hamid Khan*, XII U. D. 111=15 R. D. 394; *Suraj Pal Singh v. Ram Sarup*, XIV U. D. 26; *Abid v. Mahabir*, B. R. 1 of 1932.

<sup>6</sup> *Bindeshri Prasad v. Ram Lal*, XI U. D. 1.

<sup>7</sup> *Narsingh v. Kariya*, IV U. D. 311=6 R. D. 409; *Sri Ram v. Gangu*, XIII U. D. 191=14 L. R. Rev. 74; *Katesar v. Islok*, XIV U. D. 428=14 L. R. Rev. 143.

not to amount to admission of the sub-tenant to the tenancy in chief.<sup>1</sup> If *A* knew that the tenant had disappeared and with that knowledge received the rent for a period after the tenant's disappearance, the receipt will be a strong piece of evidence (and even estoppel) of admission,<sup>2</sup> the more so if *B* paid the rent on an agreement that he would be allowed to continue in possession.<sup>3</sup>

But if *A* did not know or cannot be fixed with knowledge of the tenant's disappearance, the receipt by itself will not be evidence of admission of *B* to the tenancy-in-chief. *B* was recorded since 1305 *Fasli* as sub-tenant of a holding of which *C* was the tenant-in-chief. At some unknown date before 1341 *Fasli* *C* disappeared and his name was removed from the *khataoni* in that year, but *B* continued to pay, as before, the rent of the tenant-in-chief to the zamindar. In the absence of entries in the patwari's papers as to *B* having become the tenant-in-chief or of evidence that the zamindar has admitted *B* to the tenancy-in-chief, since 1341, the mere continued receipt of rent from *B* does not lead to the inference of *B*'s admission but rather the contrary.<sup>4</sup> So, if the patwari's statement as to admission was not put to the landholder when examined as a witness to enable him to explain it.<sup>5</sup>

If *C*'s rights were lost in any of the ways mentioned in the Tenancy Act, such receipt would furnish good evidence of the zamindars' knowledge, and of admission by him of *B*, otherwise, mere acceptance of rent does not prove admission.<sup>6</sup> There, *C* the occupancy tenant, had, on leaving the village for trade outside made arrangements for the payment of the *batai* rent direct by his sub-tenants, and after his death, his widow had established her right of succession to the tenancy and got her name recorded. *B* continued to pay the rent as before direct to the zamindar. *B* got the *batai* rent commuted into cash rent, but without setting up any right to the tenancy-in-chief. Simultaneously, *B* had the name of the widow cut out of the *khatauni* without any authority. It is obvious that without proof of abandonment, or surrender, or ejectment of the widow, *B* could not become the tenant-in-chief. Hence in the absence of such evidence, the mere receipt of rent by the zamindar from *B* did not prove his admission to the tenancy-in-chief. Mere acceptance of rent and inaction of the zamindar for 18 months after knowledge of trespass by *B* was held not to amount to admission of *B* as tenant.<sup>7</sup>

<sup>1</sup> *Raghubar v. Debi Saran*, 11 L. R. Rev. 1, XI U. D. 96, but see *Chitesar Rai v. Ram Ran Bijai Prasad Singh*, 1939 A. L. J. (B. R.) 84=1939 R. D. 472.

<sup>2</sup> *Darshaneshwar v. Baldeo*, 11 R. and Cr. L. J. 63=VI U. D. 402=6 L. R. Rev. (Oudh) 18=1925 R. C. 80=8 R. D. 300.

<sup>3</sup> *Chandi v. Paragi*, XIII U. D. 44.

<sup>4</sup> *Kanhai Lal v. Nokhey*, XVIII U. D. 341=1937, R. D. 558.

<sup>5</sup> *Sheo Prasad v. Gudar*, XII U. D. 166=12 L. R. Rev. 12.

<sup>6</sup> *Ajuban v. Mulu*, 1938 A. L. J. (B. R.) 15.

<sup>7</sup> *Ram Adhin v. Phul Kuar*, XVIII U. D. 328.

A was the tenant of land under a lease yet unexpired. The landholder ejected A, but a crop sown on the land by B was still standing on. B paid a sum which represented the rent due for occupation on account of the crop standing at the date of ejection. Hence it was rent due on A's tenancy and not on any alleged tenancy in favour of B. B could not have been admitted as tenant so long as A's tenancy lasted, even though he had been in occupation for more than a year and paid rent direct to the zamindar.<sup>1</sup> Even if B's occupation had been under an arrangement with the zamindar over the head of A, B could not be said to have been admitted to the tenancy.<sup>2</sup>

The widow of a tenant is entitled to succeed him and take the holding until her remarriage. If she holds on after remarriage and soon after the zamindar, not fully aware of the facts, receives rent from her, he has not admitted her as tenant in her own right.<sup>3</sup>

An occupancy tenant, a boy, while living with his father's sister and her son, allowed the latter to cultivate the land and pay rent. The boy left the village but the zamindar knew nothing of this and took no action against the sister's son, who continued in charge as before. An application for removal of the boy's name was not contested by the zamindar, who however applied for review of the order allowing the application *ex parte*. A few days after the application for review, the landlord accepted a sum of money sent as rent by the sister's son. It was held that this acceptance did not prove admission of the sister's son, because there was nothing to show that the sum was sent as rent for the period during which the sister's son was holding in his own right, and the relations between the parties were such that he would probably not have been accepted as tenant.<sup>4</sup>

Acceptance of rent and misdescription of the payer's status as tenant does not prove admission.<sup>5</sup> Of course, acceptance of canal dues from a trespasser is no evidence of his admission.<sup>6</sup>

A receipt of rent passed under a misapprehension of facts by a landholder to a person whose name has been entered as tenant in the patwari's papers, was not deemed to prove the admission of the person.<sup>7</sup> The misapprehension was that the payer was the heir (son) of the deceased tenant or that the rent had been paid on behalf of her mother who was taken to be the widow of the deceased.

<sup>1</sup> *Ashfaq Ullah v. Somai*, XII U. D. 120=12 L. R. Rev. 230.

<sup>2</sup> *Sheo Prasad v. Kashi Prasad*, XVI U. D. 179; *Jai Devi v. Tota Ram*, XVII U. D. 70.

<sup>3</sup> *Raghubar Rai v. Somari*, XV U. D. 66=15 L. R. Rev. 578.

<sup>4</sup> *Ram Sarup v. Kundan*, XV U. D. 241=15 L. R. Rev. 365.

<sup>5</sup> *Asghar v. Muna*, XVIII U. D. 215.

<sup>6</sup> *Durga Debi v. Bidri Prasad*, XII U. D. 89.

<sup>7</sup> *Nath Chandawat Koer Trust v. Mir Ali*, 13 L. R. Rev. 114= XIII U. D. 74; *Ram Charan Lal v. Laloo Lal*, XX U. D. 150=1939 R. D. 59.

Taking rent from a person who is not the heir of a deceased tenant, even for a period subsequent to the death of the tenant, may but does not necessarily, prove the admission of such person to the tenancy,<sup>1</sup> unless the circumstances under which the rent was received indicate an intention to admit to tenancy.<sup>2</sup> Where at the death of a tenant his holding was, with his consent, in the possession of a third person and in the subsequent year the zamindar accepted the rent from the brother of the deceased, this was held to prove admission of the brother to the tenancy.<sup>3</sup> Similarly, a receipt passed to the mortgagee in possession who had been paying rent to him in the life-time of the tenant and who paid him the rent after the tenant's death, under the belief that the tenancy had not lapsed on account of death heirless of the tenant as the name of a collateral was entered in the papers as his successor which he was not.<sup>4</sup> If the tenant had left an heir, e.g. a widow who had not re-married then, such receipt would be valueless on evidence of the admission of the mortgagee as tenant;<sup>5</sup> and more so, if a relation of the mortgagee had paid the rent and who was in occupation, the receipt reciting that the payment had been received on account of the original tenant's holding.<sup>6</sup>

A suit contesting a notice of ejectment was dismissed on 18th January, 1908, and the tenancy terminated on 15th May, 1908. The landlord did not obtain notice of the Board's decision in time to file an application under section 60 but he filed it in 1909. Acceptance of rent in the meantime is not fresh admission to the holding.<sup>7</sup>

So acceptance of rent from a person under an erroneous belief that the land had been let to that person is not proof of that person's admission.<sup>8</sup>

Acceptance of rent from or suing a squatter as a tenant in a revenue court was held to be proof of admission to tenancy.<sup>9</sup>

A took a lease of old fallow land which he never cultivated. He was described as a *haqdar* tenant in a receipt for rent or in a suit for arrears of rent. This does not prove admission to tenancy,<sup>10</sup> probably because the land might have been pasturage land.

A sub-tenant continuing in possession after the tenant's death does not for that reason alone become admitted to the holding.<sup>11</sup>

<sup>1</sup> *Juqnohan v Kamta Shiromani Prasad Singh*, II U. D. 648=2 O. L. J. 730=33 I. C. 247.

<sup>2</sup> *Tilok Kuar v. Raghubar Singh*, B. R. 15 of 1892.

<sup>3</sup> *Darshaneshwar Nath v Baldeo*, VI U. D. 404=6 L. R. Rev. (O.) 18=1925 B. C. 80.

<sup>4</sup> *Hotim Husain v Pragg Singh*, XII U. D. 73=12 L. R. Rev. 133.

<sup>5</sup> *Sri Ram Chandra Jankiji v Ram Raj*, XIV U. D. 429=14 L. R. Rev. 207.

<sup>6</sup> *Surajpal Singh v. Ram Sarup*, XIV U. D. 26=14 L. R. Rev. 63.

<sup>7</sup> *Sri Dat v. Indar Dewan Singh*, B. R. 15 of 1910.

<sup>8</sup> *Raghubir Singh v. Bhawanani Prasad*, XV U. D. 155=15 L. R. Rev. 214.

<sup>9</sup> *Collector of Basti v. Sarnam Singh*, 8 A. L. J. 862; *Sat Ram v. Ram Kumar*, B. R. 3 of 1910.

<sup>10</sup> *Ram Adhin v Narain Rao*, XVIII U. D. 288=1937 R. D. 456.

<sup>11</sup> *Sahdeo v. Shao Deen*, XI U. D. 43=11 L. R. Rev. 62; *Sohan Prasad v. Suraj Pal Singh*, 11 L. R. Rev. 193=14 R. D. 429.

A mukaddami tenure is intransferrable and acceptance of occupancy rent from the transferee thereof may amount to his admission as a tenant, but not as an occupancy tenant.<sup>1</sup>

Mere entry in a khatauni of a person's name as tenant is not conclusive proof of his admission as tenant, though it is very good evidence.<sup>2</sup> A mere entry that a person cultivated certain plots of land from 1331 to 1333 *Fasli* (before the coming into operation of the Tenancy Act, 1926) was not considered enough to prove his admission to the tenancy,<sup>3</sup> for such cultivation merely proves possession and not admission to tenancy. An entry by a patwari of a person's name as *kahiz* does not of course prove his admission to the tenancy,<sup>4</sup> specially if there is an existing tenant of the land.<sup>5</sup> The admission and existence of tenancy could be inferred from such entry completed with cultivation of the plots by the person on the day the Tenancy Act came into operation, *i.e.*, the 7th of September, 1926.

The continuance of a person's name in the khatauni after his ejection and delivery of formal possession to the landholder does not prove readmission.<sup>6</sup>

Where *A* is the tenant while *B*'s name appears in the village papers as tenant, the incorrectness of the entry may be proved. An incorrect entry in the partition papers that *A* who is really the tenant of land *M* is tenant of land *N* does not affect *A* who remains the tenant of *M*.<sup>7</sup>

Where the mother of a son whose death before 1902 was doubtful, had all along since his death been entered as occupancy tenant, and the defendants had paid rent in her name and passed receipts similarly, she was deemed to be the tenant.<sup>8</sup>

*Some miscellaneous cases on admission to tenancy.*

The expression *admitted* has been the subject of interpretation by the Oudh Court and the following have been held to be tenants who have been admitted:—

(i) A perpetual lessee under a lease granted or a decree made after the Act, whose rent is variable, and who may in certain events mentioned in the lease be ejected.<sup>9</sup>

<sup>1</sup> *Dulra v. Narain Singh*, XIX U. D. 22=1938 R. D. 18.

<sup>2</sup> *Muh. Ishaq v. Sardar Khan*, XII U. D. 92.

<sup>3</sup> *Bishwa Nath v. Ram Kumar*, 12 L. R. Rev. 84; *Ram Dayal v. Pahlad Singh* XVI U. D. 102.

<sup>4</sup> *Suraj Narain Das v. Ram Sumaran*, XI U. D. 152=11 L. R. Rev. 187.

<sup>5</sup> *Gobind Prasad v. Nimmi*, VI U. D. 292=5 L. R. Rev. 181 (O)=9 R. D. 247=1924 R. C. 500.

<sup>6</sup> *Bansidhar v. Bholi*, XVIII U. D. 362=1937 R. D. 585.

<sup>7</sup> *Janki Ramjana v. Jaikhandi*, XII U. D. 299; see also *Nanhi v. Puran Singh* XIV U. D. 8=14 L. R. Rev. 10.

<sup>8</sup> *Lachminia v. Bhairo*, 12 L. R. Rev. 45=15 R. D. 170.

<sup>9</sup> *Lal Muneshwar Baksh Singh v. Gaya Bakht Singh*, I U. D. 353=33 I. C. 729.

(ii) A cultivating tenant of land forming part of a much larger area leased by Government to someone else.<sup>1</sup>

(iii) Tenants under leases created *bona fides* by thekedars and mortgagees in possession.<sup>2</sup> So under our Act.<sup>3</sup> See *ante* note (iii), pages 194-95.

(iv) A tenant cultivating waste land from year to year without a patta or contract in respect of the land, although he cultivated such land previously under pattas.<sup>4</sup>

(v) Land neither *sir* nor *khudkasht* of ten years' cultivation but under the *khudkasht* of a co-sharer, allotted to the patti of another co-sharer, but continuing in the cultivation of the co-sharer as before, was a statutory tenant's holding,<sup>5</sup> unless the co-sharer to whose patti it has been allotted took prompt steps to eject him after the partition.

(vi) Acceptance of rent from the transferee of a tenant whose holding was not transferable made him a statutory tenant<sup>6</sup> but before such acceptance of rent, the transferee was, if a tenant at all, a non-occupancy tenant.<sup>7</sup> Acceptance of rent from him could make him a tenant.<sup>8</sup>

(vii) A tenant by sufferance became a statutory tenant if rent is accepted from him, otherwise he was a non-occupancy tenant.<sup>9</sup>

(viii) The holder of a clearing cultivating lease for an indefinite term, though called a thekadar was a statutory tenant.<sup>10</sup>

(ix) A tenant holding under a muafidar, who was not liable to have rent fixed was a statutory tenant;<sup>11</sup> but he was a sub-tenant if he was so liable. Now he is a sub-tenant according to section 3 (22).

Where a tenant illegally ejected takes proceedings for reinstatement and is reinstated and restored to possession, he is admitted to the tenancy not from the date of restoration, but from long before the illegal loss of possession.<sup>12</sup>

<sup>1</sup> *Mathura Prasad v. Ganga Charan*, II U. D. 467.

<sup>2</sup> *Lal v. Uday Pertub*, B. R. 9 of 1892

<sup>3</sup> *Muk. Baksh v. Pabitra Pandam*, 12 L. R. Rev. 55=15 R. D. 212.

<sup>4</sup> *Hurdial Singh v. Bhaya Tirbhawon Dal Ram*, B. R. 24 of 1892.

<sup>5</sup> *Debi v. Raghubar*, (Oudh) Rent Act Ruling No. 54.

<sup>6</sup> *Dep. Com. v. Ramanand*, II U. D. 476.

<sup>7</sup> *Ram Nath v. Avadh Behari*, II U. D. 627.

<sup>8</sup> *Dep. Com. v. Ramanand*, II U. D. 476.

<sup>9</sup> B. R. 12 of 1918=5 Rev. and Cr. L. J. 138; so under the Act of 1926; *Mehar Zia Begam v. Junki*, 10 L. R. Rev. 243.

<sup>10</sup> *Swami Dayal v. Nabi Baksh*, B. R. 1 of 1893.

<sup>11</sup> *Baldeo v. Sarda Prasad Singh*, B. R. 8 of 1893; See *Bhikaree v. Ram Bharrase*, XII U. D. 330=12 L. R. Rev. 379.

<sup>12</sup> *Sukhray Kuar v. Rajeswari Prasad*, III U. D. 148.

A thekadar or mortgagee continuing to occupy some or all of the lands comprised in his thoka or mortgage after its termination does not do so as tenant, but if the owner expressly or impliedly consents to the continuance of occupation, there is admission to tenancy.

(xxii) **Otherwise than as a permanent tenure-holder, etc.**—Under the Act of 1926, section 19 (a) also a permanent tenure-holder or a tenant with a right of occupancy (which of course included fixed rate and exproprietary tenants) could not be classed as a statutory tenant. Now he will not be classed as a hereditary tenant. The same remarks apply to a sub-tenant unless some provision of the Act declares him to be a hereditary tenant. Tenants of *sir* could not be classed as statutory tenants, and are not classed as hereditary tenants under this Act; but under sections 8, 13, 15, a *sir*-tenant may become a hereditary tenant.

Under the Oudh Act, a tenant with a right of occupancy (which included exproprietary tenants) or a sub-tenant could not be classed as a statutory tenant. Now such a tenant and tenants holding on special terms in Oudh [see section 21 (c)] will no be classed as hereditary tenants. To come within the words "other than etc." in sub-section (1), the tenant must belong to one of these classes. For instance, a person who is not really a permanent tenure-holder or a fixed-rate tenant under the definitions of those expressions but who by contact or estoppel enjoys the position and advantages of such tenant will not fall within these words, and will become a hereditary tenant. So a person who might have been but did not become or is no longer an exproprietary tenant. A sub-tenant while having that status in respect of a land cannot have hereditary rights in respect of it. But once he ceases to be a sub-tenant, there is no obstacle to his becoming a hereditary tenant. Termination of the sub-tenancy will not make the sub-tenant a hereditary tenant because of his continued occupation, because the landlord must admit as a tenant-in-chief. Where a tenant-in-chief died before 7th September, 1926 and the landlord accepted him as tenant-in-chief he became a statutory tenant from that date, even though the holding was mortgaged without the mortgagee obtaining possession from him.<sup>2</sup> Now he will be a hereditary tenant under similar circumstances.

(xxiii) Section 29 (2)—This sub-section corresponds to section 19 (b) of the Agra Act, and section 37 of the Oudh Act.

**Admitted**—We have already discussed the meaning of this word under sub-section (1).

**Or is deemed to be admitted, i.e.**, though not expressly admitted by the landholder, yet his occupation arose or arises under circumstances which make him deemed to be admitted to the tenancy. We have discussed such cases under sub-section (1).

**As tenant**—The admission must be as tenant and not in any other capacity, e.g. not as a mortgagee, thekadar etc.

<sup>1</sup> *Ram Dutt v. Muh Ali Khan*, B. R. 17 of 1891; *Jadur Kuar v. Ram Nath*, B. R. 34 of 1891.

<sup>2</sup> *Mathura Prasad v. Nankoo*, XIV U. D. 262=14 L. R. Rev. 447.

Where as the result of a compromise in a court proceeding the defendant was allowed to retain possession of certain land up to a certain date and then had to deliver possession, he was not admitted as a tenant.<sup>1</sup>

*Of land*—See section 3 (10) for meaning. Admission as tenant of an object which is not land according to the definition of that word will not create hereditary tenancy rights. Hence tenants of land for the time being occupied by buildings, other than buildings which are improvements or land appurtenant thereto, will not be hereditary tenants. Tenants of groveland, pasturage, etc., would be hereditary tenants but section 30 comes in the way and prevents them from becoming such tenants.

*Other than sir*—Tenants of *sir* admitted after the commencement of the Act will not be hereditary tenants. Under section 19 (b) of the Act of 1926 the position was the same, so under section 67 (1) (a) of the Oudh Act.

*By a landlord,.....permanent tenure-holder*.—The Acts of 1926 and 1886 did not mention the classes of persons who could admit, as this section does. Under the Act of 1926, a tenant holding from a permanent tenure-holder at the date of that Act was not a statutory tenant, but one admitted by such holder after the commencement of that Act was a statutory tenant. Now a person so admitted after the commencement of the Act will be a hereditary tenant.

Admission by a mere landholder who is not a landlord according to the definition will not give rise to hereditary rights. Admission by an under-proprietor is expressly mentioned as giving rise to hereditary rights.

12. Cl. (c) **Acquires hereditary rights**.—*e.g.* under sections 12, 14, 15, 16 and 197.

**30.** Notwithstanding anything in section 29, hereditary rights shall not accrue in—

Land in which hereditary rights shall not accrue.

(1) grove land, pasture land, or land covered by water and used for the purpose of growing *singhara* or other produce ;

(2) land used for casual or occasional cultivation in the bed of a river ;

(3) land acquired or held for a public purpose or a work of public utility ; and in particular, and without prejudice to the generality of this clause—

(a) lands at present or which may hereafter be set apart for military encamping grounds ;

(b) lands situated within the limits of any cantonment ;

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<sup>1</sup> *Nihal Singh v. Bhagwati Prasad Singh*, IV U. D. 586—7 R. and Cr. L. J. 154. T. A.—28



(c) lands included within railway or canal boundaries ;

(d) lands acquired by a town improvement trust, in accordance with a scheme sanctioned under section 42 of the United Provinces Town Improvement Act, 1919 ; or by a municipality for a purpose mentioned in clause (a) or clause (c) of section 8 of the United Provinces Municipalities Act, 1916 ;

(e) lands within the boundaries of any Government forest ;

(f) municipal trenching grounds ;

(g) land held or acquired by educational institutions for purposes of instruction in agriculture ;

(4) such tracts of shifting or unstable cultivation as the Provincial Government may specify by notification in the official *Gazette* ;

(5) such areas included in tea estates as the Provincial Government, with the previous approval of both Chambers of the Legislature, may notify as areas in which, in the interest of the tea industry, hereditary rights should not accrue ;

(6) land transferred by a mortgage to which the provisions of the second paragraph of sub-section (5) of section 15 of the Agra Tenancy Act, 1926, apply, during the period specified in that paragraph.

1. The section indicates the classes of land in which hereditary rights are not to accrue. Most of these were also the classes over which statutory rights did not arise under the repealed Acts. For facility of reference, such lands in Oudh are separately treated later.

2. Sub-section (1)—groveland, pasture land, or land covered by water and used for the purpose of growing *singhara* or other similar produce :—clauses (a), (b) and (c) of section 19, Agra Act, excluded these from being the subjects of statutory tenancies. Tanks not used for growing *singhara* or similar produce are not exempt from being subjects of hereditary rights. Now a guava grove is a grove and the land occupied by it is groveland and may not be the subject of a hereditary tenancy.<sup>1</sup> Prior to the Act of 1926, lands under guava groves were deemed to be land, but the Act of 1926 declared to the contrary.

Lands, perhaps part of a groveland at one time, which had some guava or peach trees on them and which had become appurtenant to a

<sup>1</sup> See *Fasakatullah Khan v. Masla Buz*, XI U. D. 207 ; *Lachman Singh v. Shaukatunissa*, XV U. D. 533 (grove was on *sir*).

dwelling house and a *mutt*, were held not capable of being subjects of a statutory tenancy.<sup>1</sup>

Plantains, *papitas*, peaches and *lichis* are fruit trees, and may form groves.

Bushes and shrubs do not come within the conception of trees and the land occupied by them is not groveland. *Pan* plantations are a well known agricultural plantations but do not form groves. Lands covered by tea plants are land but not groves.

Pasture land cannot be subject to hereditary rights, and it does not lose its character because of its cultivation in one year out of thirty-three.<sup>2</sup> Where an area of grazing land was given at the commencement of 1334 *Fasli* (July 1926) to be brought into cultivation, and by 7th September, 1926 (when the Act of 1926 came in to force) only a small portion of it had been brought under cultivation, statutory rights were held to arise only in the cultivated area.<sup>3</sup> Under similar circumstances, hereditary rights will arise in the cultivated area but not in the rest.

### 3. Sub-section (2)—Land used for casual or occasional cultivation in the bed of a river.

The bed of a river usually means the region between the two banks of a river. If the river recedes or dries up in parts, some land is exposed and is at times cultivated. The sub-section is meant to cover such cases. It will not apply to other land which becomes covered with the water of a river when in flood and restored to its original condition when the river shrinks back to its normal bed. Such land is cultivated every year and not casually or occasionally, *e. g.*, lands situate at some distance from the main stream of a river subject to annual flooding during the monsoon, and cultivated for *rabi* regularly.<sup>4</sup>

### 4. Sub-section (3)—Land acquired or held for a public purpose or a work of public utility etc—This is proviso second to section 19 of the Act of 1926.

(i) *Acquired or held.* Acquisition for a public purpose gives permanent exemption from hereditary rights to the land acquired. The fact that it has ceased to be utilised for any public purpose is immaterial.

Therefore, land acquired for a cantonment (situate in what is now known as Purani Chhaoni or land in Sultanpur Cantonment within the districts of Benares and Mirzapur), which falls under clause (b) though no longer used for military purposes but cultivated for ordinary agricultural purposes and administered either by the Government of India

<sup>1</sup> *Goor Din v Chet Ram*, XV U. D. 491=16 L. R. Rev. 65.

<sup>2</sup> *Durga Prasad v. Pothi Ram*, XIV U. D. 287=14 L. R. Rev. 547.

<sup>3</sup> *Bhogawati Bibi v Ram Singh*, XI U. D. 200=11 L. R. Rev. 371.

<sup>4</sup> *Someshwar Prasad v. Abdul Rahman*, B. R. 6 of 1932=XIII U. D. (B. R.) 85=13 L. R. Rev. 381; *Contra, Kulloo v. Someshwar Prasad*, X U. D. 50=10 L. R. Rev. 274, where the area varied every year.

or as government estate by the Collector, was exempt from statutory rights.<sup>1</sup> The expression *acquired or held for a public purpose* was also used in section 11 of Act II of 1901 in connection with land over which occupancy rights could not arise and in some cases it was held that it would be absurd to hold that acquisition for a public purpose should bar the accrual of occupancy rights in perpetuity in land which had returned to the character of ordinary agricultural land even before the passing of the Tenancy Act.<sup>2</sup> A single judge of the High Court dissented from this view although he tried to differentiate the cases on grounds not altogether tenable.<sup>3</sup>

Land owned by a *Gowshala* Association and used for ordinary agricultural purposes is not land *held* for a public purpose or a work of public utility.<sup>4</sup>

Land *held* and not acquired for a public purpose or a work of public utility is exempt only so long as it is so held. The case in XI U. D. 111 comes in this class. The disjunctive word *or* leads to this interpretation.

(ii) **Clause (a) of sub-section (3).**—Land *set apart* for military encamping ground is also not subject to hereditary rights. Land so set apart at one time but which has ceased to be used for such purpose is also exempt, as it was acquired for a public purpose.<sup>5</sup>

(iii) **Clause (b) of sub-section (3).**—Land *situate within the local limits of any cantonment* is also exempt; but suppose the land has been given up as cantonment area. Under the Tenancy Act of 1901, there was some authority for holding that land once included in a cantonment area could not become the subject of an occupancy holding. That was because such lands are vested in the Government of India and the opening words of the Act excluded such land from the operation of the Act. The Act of 1926 and the present Act bring cantonment areas within its operation, unless an express exemption is made.

Hence, it would seem that land which was once within a cantonment area, but which has ceased to be so, may form the subject of hereditary tenancy, unless clause (a) applies.<sup>6</sup>

(iv) **Clause (c) of sub-section (3).**—Land once included within railway boundaries becomes subject to hereditary tenancy when it is subsequently excluded from such boundaries.

(v) **Clause (d) of sub-section (3).**—The word *acquired* shows that the fact that the Improvement Trust has subsequently excluded

<sup>1</sup> *Jagrup Singh v. Har Narain*, XI U. D. 25=10 L. R. Rev. 326.

<sup>2</sup> *Jai Nandan Misra v. Jagrup*, Petition No. 1 of 1909 10, decided on 29th July, 1909; *Bish Nath Rai v. Fox*, 11 U. D. 229.

<sup>3</sup> *Rup Naram Singh v. Jagrup Singh*, 8 L. R. Rev. 194=1927 R. C. 210=VIII U. D. (H. C.) 185

<sup>4</sup> *Lachman Das v. Jagat Singh*, XI U. D. 111.

<sup>5</sup> *Jagrup Singh v. Har Narain*, XI U. D. 25=10 L. R. Rev. 326.

<sup>6</sup> See *Jagrup Singh v. Har Narain*, XI U. D. 25.

the land acquired from its operation will not make it subject to hereditary tenancy.

Clauses (e), (f) and (g) require no comment.

5. **Sub-section (4).**—To be exempt from accrual of hereditary rights a notification by the Provincial Government in its Gazette must specify a tract to be of shifting or unstable cultivation. Is evidence to falsify the notification admissible?

6. **Sub-section (5).**—**Tea Estates**, which are exempted by the Provincial Government with the approval of both houses of the legislature, by notification, will not be subject to hereditary rights. Under the Act of 1926, certain tea estates areas were exempted from being subject to statutory rights.

7. **Sub-section (6).**—Land mortgaged under section 15 (5) of the Act of 1926.

The second paragraph of section 15 (5) of the Act of 1926 was "where the property transferred by means of a mortgage of the kind specified in sub-section (5) of section 14 consists wholly of a specific area of *sir*, the mortgagor may by simultaneous agreement in writing waive his proprietary rights, and in that case the mortgaged land shall if the mortgagor regains within 12 years of the date of the transfer possession thereof on redemption of the mortgage, resume the character of *sir*." The period mentioned was 12 years from the date of the transfer. Section 14 (5) of the Act of 1926 is reproduced in section 26 (6) of this Act, which is to the effect that a mortgage shall be deemed to be a transfer only when it has the effect of transferring proprietary possession. Under section 15 (5) of the Act of 1926 statutory rights did not accrue during the period of 12 years from the date of the transfer. Now, hereditary rights will not accrue during the same period, provided the mortgage transfers possession and is wholly of a specific area of *sir*, and is redeemed by the mortgagor within the period of 12 years. If not redeemed within 12 years, the land will cease to be *sir*.

8. In Oudh, sections 36, 37 dealt with the matters comprised in section 29 of the present Act and these sections were to have effect subject to the provisions of certain other sections of the Act, *viz.*

(i) Sub-sections (3) and (4) of section 4 relating to land not previously cultivated. These sub-sections were practically identical with section 8 (3) of the Agra Act, which was probably borrowed from the Oudh Act. Present section 4 (3) corresponds to these enactments.

(ii) Section 30A relating to the acquisition of land by the landlord for certain purposes. Section 30A corresponded to sections 40 to 42 of the Agra Act, and is now no part of the Tenancy Act.

(iii) The proviso to section 45 relating to persons succeeding as heirs of tenants under section 48. That related to enhancement of rent of heirs of statutory tenants. It is no part of the present Act,

(iv) The second and third provisos to clause (e) of sub-section (1) of section 62A relating to non-resident tenants. The second proviso provided that if a non-resident or *pahi kasht* tenant was not ejected on the ground of non-residence at the end of the statutory period (ten years) he was deemed to have been admitted under section 37, and the third proviso related to enhancement of rent of tenants so deemed to have been admitted.

If a suit for ejectment under section 62A (e) failed or if the landlord did not obtain actual ejectment after decree, a fresh case of admission arose.<sup>1</sup>

Clause (e) applied to a *pahi kasht* tenant whose landlord had transferred his proprietary interest to a person who had no proprietary interest in the village in which the tenant ordinarily resided.<sup>2</sup>

(v) Sections 36 and 37 were also subject to sections 67 and 157 excluding certain classes of land and specified areas from the operation of certain sections of the Act. Section 67 withheld the rights conferred by sections 36, 37 and 48 from certain classes of land, viz.,

(a) *sir* land (Now sections 12, 14, 15 and 16 declare hereditary rights in some parts of land which was *sir*, as in Agra) ;

(b) land held by a tenant, otherwise than under a special agreement or decree of court, in a village in which the tenant possessed any proprietary or underproprietary right ;

(c) land leased for pasturage (as in Agra).

(d) land covered with water and used for the purpose of growing *singhara* or other similar produce (as in Agra).

(e) land planted by the landlord with trees (corresponding to grove land in Agra)

Clauses (a), (c), (d) and (e) have already been discussed above (*vide* pages 217, 218-19 *supra*). As to (b) it was held that where a tenancy was in two persons, one of whom did not possess underproprietary rights when the Amending Act of 1921 came into force, the latter was and remained a non-statutory tenant.<sup>3</sup>

Clause (b) referred to ownership in a village. Hence if a village had been partitioned into two or more mahals, proprietary or underproprietary right in any mahal stood in the way of statutory rights in any of the mahals.<sup>4</sup>

If the tenant was merely a mortgagee in possession of proprietary or underproprietary rights, he did not possess any such rights for the

<sup>1</sup> *Sabhojit Singh v. Jawahir Lal*, VI U. D. 199=5 L. R. Rev. (Oudh) 135=1 O. W. N. 653.

<sup>2</sup> *Shankar Sahai v. Balwant Singh*, XV U. D. 134=18 R. D. 147.

<sup>3</sup> *Bindeshri Singh v. Balraj Kuer*, XVII U. D. 382=1936 R. D. 502.

<sup>4</sup> *Pokhun Singh v. Kamlapat Prasad*, VIII U. D. 2=8 L. R. Rev. 15. See also *Sri Ram v. Angad Singh*, XVII U. D. 380=1936 R. D. 520.

purposes of clause (b) and could be a statutory tenant<sup>1</sup> The tenant proprietor could by estoppel be prevented from setting up the plea that he was a mere mortgagee.<sup>2</sup> So a member of a joint Hindu family which owned underproprietary rights in ancient landed property.<sup>3</sup>

The expression "any underproprietary right" was intended to cover "any sort of" underproprietary rights in Oudh such as *birt*, *dasaundh*, *nankar* etc., and "possess any...underproprietary right" meant "is in possession of the rights of an underproprietor in any shape or form, is capable of exercising the rights of an underproprietor in respect of the land, and pays rent or is liable to the payment of rent therefor."<sup>4</sup>

A person holding *muafi* was of course not a tenant who could come under clause (b), but not so if it was really an ordinary rent paying land.<sup>5</sup>

A *muafidar* became an underproprietor from the date of a declaration to that effect in his favour under section 107H.<sup>6</sup>

Acquisition by him of proprietary or underproprietary rights subsequent to the admission of a person to tenancy did not cause loss of his statutory rights.<sup>7</sup> If the admission was subsequent to the acquisition, no statutory rights can accrue to him<sup>8</sup> So where a rent-free grantee who was at the same time an under-proprietor had rent assessed on him under section 107G, he became a statutory tenant.<sup>9</sup>

Subsequent parting with such rights by the tenant did not make him a statutory tenant without a fresh admission thereafter.<sup>10</sup>

Land declared by a competent revenue court to be held under a special agreement came under the words "otherwise than under a special agreement" although a Civil Court had declared the holder of it not to possess any underproprietary rights.<sup>11</sup>

<sup>1</sup> *Gur Dayal v. Gur Dayal*, B. R. 1 of 1935=XVI U. D. 111; *Bakht Bali v. Daya Shankar*, XIII U. D. 130=13 L. R. Rev. 309.

<sup>2</sup> *Ram Naresh Singh v. Dulsingar Singh*, XII U. D. 165=12 L. R. Rev. 111.

<sup>3</sup> *Binda Singh v. Daya Shankar Singh*, B. R. 4 of 1935=XVII U. D. 113=1936 R. D. 136; *Ruqaiyya Khonum v. Sitta Prasad*, X U. D. 156

<sup>4</sup> *Binda Singh v. Daya Shankar*, B. R. 4 of 1935=XVII U. D. 113

<sup>5</sup> *Muzaffur Husain v. Sheo Mangal*, XVII U. D. 277=1936 R. D. 487.

<sup>6</sup> *Gur Prasad Singh v. Dudh Nath*, B. R. 11 of 1926=VIII U. D. (B. R.) XIX=8 L. R. Rev. 137; *Partab Bahadur Singh v. Bajrang Bali*, 11 O. C. 87, but see *Bala Din v. Ajodhia*, 1 O. W. N. 583.

<sup>7</sup> *Gur Prasad Singh v. Dudh Nath*, B. R. 11 of 1926.

<sup>8</sup> *Rameshwar v. Ram Harak*, XIII U. D. 87.

<sup>9</sup> *Munir Ahmad v. Sultan Khan*, B. R. 12 of 1932=XIV U. D. (B. R.) 4=13 L. R. Rev. 418.

<sup>10</sup> *Mahipat Singh v. Inderbali*, XIII U. D. 571; *Krishna Pal Singh v. Pardos*, B. R. 12 of 1924=VI U. D. (B. R.) lx1=6 L. R. Rev. (O.) 23=1925 R. C. 83.

<sup>11</sup> *Uma Prasad v. Thakur Din*, XIII U. D. 133.

Estoppel by conduct could debar a landlord from pleading that the tenant could not be a statutory tenant in view of clause (b), *e. g.*, where he had conferred statutory rights for a substantial *nazrana* or other advantage to himself.<sup>1</sup>

Section 157 enacted that the benefit of sections 36, 37, 48 shall not extend to the areas specified in Schedule D to the Act, or to any other area added to the Schedule by the Governor in Council.

Schedule D comprised :—

- (a) the parganas of Naghashan Palia and Khairagarh in the district of Kheri, (no longer exempt) ;
- (b) alluvial mahals for the time being registered as such under the rules made under clause (k) of section 234, Land Revenue Act ; (No longer exempt, unless they come under subsection (4).)

*N. B.*—The rules made under section 234(d) (Circular 7—I of the Board of Revenue, Rule 24, and Circular 8—I of the same, Rule 7, enjoined the settlement officer to prepare a list of alluvion and deluvion register showing the parganas in the district which are subject to fluvial action and lists of alluvial mahals held for various periods of arrangement, special arrangement, unconditional long term settlement, conditional long term settlement, quinquennial settlement, or, in the case of permanently settled districts, special arrangement, and temporarily settled, permanently settled.)

- (c) lands heretofore or hereafter granted under the waste land rules for the time being in force in Oudh (as in Agra).

Statutory rights did not accrue even after resumption by Government, unless the land was removed from the category of waste land by notification.<sup>2</sup> There is no exemption now.

- (d) lands set apart for military camping grounds, (as in Agra) ;
- (e) lands situate within the limits of any cantonment (as in Agra) ;
- (f) Nazul lands (no longer exempt) ;
- (g) lands within railway boundaries, (as in Agra) ;
- (h) land acquired by a Town Improvement Trust in accordance with a scheme sanctioned under section 142 of the United Provinces Town Improvement Trust Act, 1919, (as in Agra) ;
- (i) land within the boundaries of any Government Forest, (as in Agra).
- (j) lands appurtenant to any jail ; municipal trenching grounds ; lands used for casual or occasional cultivation in the bed of a river (as in Agra). Lands appurtenant to jails are not exempt.

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<sup>1</sup> *Jai Raj Kuar v. Sheo Pal Singh*, XII U. D. 280=15 R. D. 695 ; *Tarak Nath Biswas v. Fateh Bahadur Singh*, XV U. D. 132 ; see also *Janki Muras v. Abdus Sattar*, XV U. D. 41=15 L. R. Rev. 18.

<sup>2</sup> *Ganga v. Secretary of State*, XIV U. D. 82=14 L. R. Rev. 323.

(vi) Sections 36, 37 were also subject to section 68 relating to *thekadars*, mortgagees and sub-tenants.

Section 68(1) did not allow any rights conferred by sections 36, 37 and 48 to be acquired by a *thekadar*, mortgagee or sub-tenant in any of the land comprised in his *theka*, mortgage or subtenancy, but section 68(2) provided that a person having those rights in land did not lose them by taking subsequently a *theka* or mortgage in which his holding was comprised.

In *Agra, Parma v. Umrao*<sup>1</sup> decided to the same effect as section 68(1). In *Oudh, Jagatjit v. Rupan*<sup>2</sup> was similar.

As to section 68(2), it was held that if a mortgagee while in possession as such got himself entered as a tenant, he was really not a tenant and on redemption could not claim the rights of a tenant.<sup>3</sup>

It was also held that the period of a *theka* counted towards the statutory period of ten years as to land held before the *theka*.<sup>4</sup>

If the *thekadar* let a part of the land comprised in his *theka* for the remainder of the tenancy of his *theka*, and was ejected on such termination, the tenant let in by him had to vacate or be treated as a trespasser.<sup>5</sup>

(vii) Sections 36, 37 were also subject to section 127 relating to persons possessing land without title. Section 127 gave an option to the person entitled to eject such person as a trespasser to treat him as a tenant and sue for rent, but expressly denied to him the status and rights of a statutory tenant.

Section 34 of the *Agra Act*, 1901, and section 44 of the *Agra Act*, 1926, were to the same effect.

Section 180 of the present Act empowers the person entitled to give consent to occupation of land to eject such trespasser, but if the decree for ejectment obtained is not executed within the period of limitation, the person occupying without his consent will become a hereditary tenant.

It is thus apparent that the exceptions mentioned in the provisos to section 19 of the *Agra Act*, also applied to *Oudh*, and are those made by the present Act.

9. **Heirs of statutory tenants.**—The heir of a statutory tenant will now become a hereditary tenant. As the subject will be of some importance for some time to come, it will be useful to summarise the law as to heirs of statutory tenants. Under the *Oudh Act*, section 48(1), the heir of a statutory tenant was entitled to retain possession of the holding of his deceased ancestor for five years after his death at the same rate of rent, unless section 62-A(1)(e) applied to him, in which event he could hold on at the old rent up to the expiry of the statutory period, i. e., ten years; and under section 62-A(1)(e), a statutory tenant could be ejected before

<sup>1</sup> B. R. 1 of 1885.

<sup>2</sup> Rent Act Ruling No. 52.

<sup>3</sup> *Inder Pal Singh v. Sital Prasad*, IX U. D. 41—9 L. R. Rev. 71—1927 R. C. 588.

<sup>4</sup> *Ajodhiya Estate v. Bhagwan Din*, II U. D. 645—3 R. and Cr. L. J. 101.

<sup>5</sup> *Krishna Kumari v. Tribhuvan Datt*, X U. D. (H. C.) 189.



such expiry if he was such tenant in a village in which he did not ordinarily reside, and the landlord did not possess any proprietary or underproprietary right in the village in which the tenant ordinarily resided and the landlord desired to let the holding to a resident tenant.

On the expiration of the statutory period or of the five years thereafter, the landlord had to take immediate steps to eject him, and, if he did not, he could be said to have readmitted the tenant or admitted the heir to a fresh tenancy;<sup>1</sup> but if he took such steps, no case of readmission or admission arose;<sup>2</sup> and acceptance from the heir of the rent for the period of his occupation after the termination of the prior statutory period did not imply admission of the heir as tenant. As to the acts of the landlord which were or were not deemed to amount to admission of the heir as tenant, see the cases in the footnote.<sup>3</sup>

In Agra, section 20 of the Act of 1926, entitled the heir of a statutory tenant to hold on for five years after the tenant's death or, if the tenant held under a term lease the period of which had not expired at such death, up to five years or the end of the unexpired portion of the lease, whichever was longer; but if he was admitted in writing by the landholder as a tenant,<sup>4</sup> or no steps were taken by the landholder within three years after the expiry of the period mentioned above, the heir was deemed to have been admitted to the holding in his own right.

A decree or order of ejectment had to be executed to terminate the right to hold on.<sup>5</sup> Proceedings for ejectment could be taken in the fifth year, although ejectment could not be effected until the lapse of five years.<sup>6</sup> Omission to eject him within three years after the expiration of five years from the death of the tenant or the termination of the lease, as the case might be, made the heir a statutory tenant.<sup>7</sup> Commencing proceedings within the said period was enough although the litigation had not ended at the close of the three years.<sup>8</sup> If the landholder did not

<sup>1</sup> See *Court of Wards v. Ram Charan*, II U. D. 218; *Ram Kuar v. Lal Sheo Pertab Bahadur*, B. R. 3 of 1904=*Zaki v. Sukhai*, VI U. D. 252=5 L. R. Rev. (O.). 164; *Zaki v. Dujai*, VI U. D. 253=5 L. R. Rev. (O.) 165.

<sup>2</sup> II U. D. 218, *Yad Ali v. Fakira*, B. R. 1 of 1900; *Ram Sunder Singh v. Muhammad Mehdi Ali Khan*, B. R. 11 of 1914=I U. D. 98=XXII U. D. 218.

<sup>3</sup> *Udit Narain Singh v. Gur Charan*, I U. D. 237; *Farzand Ali v. Paltu*, B. R. 18 of 1891; *Lachman Singh v. Har Charan*, B. R. 19 of 1891; *Bhaiya Kandhai Prasad v. Mantura*, XII U. D. 266.

<sup>4</sup> But not only for the period for which the tenant was entitled to hold on under the section, *Jagan Nath Buz v. Bahadur Singh*, XV U. D. 482.

<sup>5</sup> *Gopal Dei v. Hira*, XV U. D. 210=15 L. R. Rev. 324.

<sup>6</sup> *Ganga Pasi v. Gaya Prasad*, XVII U. D. 226=1936 R. D. 329; *Rameshar Das v. Debi*, XVIII U. D. 177=1937 R. D. 254.

<sup>7</sup> *Kirpal v. Gur Das*, 4 O. W. N. 672=105 I. C. 215.

<sup>8</sup> *Uma Nath Buz Singh v. Jagan Nath Prasad*, B. R. 11 of 1934=XV U. D. (B. R.) 32=15 L. R. Rev. 719.

execute the decree or order of ejectment obtained by him, he could sue again within the three years.<sup>1</sup>

The son of a person who was a tenant when the Rent or Tenancy Act, came into force became the heir of a statutory tenant.<sup>2</sup>

**31.** All tenants other than permanent tenure-holders fixed-rate tenants, tenants holding on special terms in Oudh, ex-proprietary tenants, occupancy tenants and hereditary tenants are non-occupancy tenants.

The definition of non-occupancy tenant is with slight necessary variations the same as in section 21 of the Agra Act of 1926, and section 19 of the Agra Act of 1901.

Under the Act of 1901, there was little difficulty about ascertaining whether or not a tenant was a non-occupancy tenant. The dispute frequently was whether a tenant was a non-occupancy or an occupancy tenant or whether he occupied land without the consent or contrary to the will of the zamindar. Length of occupation as determined by the rules laid down in sections 11 to 16 of the Act of 1901 was the sole and deciding factor in ascertaining whether a tenant was an occupancy or non-occupancy tenant.

Whether a person was a tenant at all or occupied the land without the consent of or against the will of the zamindar depended on whether the zamindar did admit, or could be said to have admitted, him to the tenancy. If the answer was in the affirmative he was classed as a non-occupancy or an occupancy tenant according to the length of his occupation after such admission. Under the Act of 1926, if such length of occupation was less than 12 years, on 7th September, 1926, or where his admission commenced after that date, he was a statutory tenant under clause (a) of section 19, and not a non-occupancy tenant. If the answer was in the negative, he was not a tenant at all, and section 34 of the Act of 1901, and section 44 of the Act of 1926, provided for his expulsion.

Tenants of *sir*-land, and of land used for the purpose of growing *singharas* or other similar produce were non-occupancy tenants. They are so even now, as sections 29 and 30 show; but with this difference that a tenant of *singharas* land became an occupancy tenant by length of occupation. A tenant of *sir* land could not acquire occupancy rights by prescription, but he could, by grant under the Act of 1926. Where a *sir* holder let the *sir* on a term lease and then sold his proprietary rights in the *sir* and relinquished his exproprietary rights, the lessee on the expiration of the term of the lease became a non-occupancy tenant liable to ejectment as such by the *lambardar*.<sup>3</sup> Holders of grove-land were for certain purposes classed as non-occupancy tenants, and could not become occupancy

<sup>1</sup> *Ram Kumar v. Mailu*, XVIII U. D. 327—1937 R. D. 513.

<sup>2</sup> *Audesh Rai v. Bhawani*, XVII U. D. 367—1936 R. D. 538.

<sup>3</sup> *Kurey v. Zakaria Mal*, XVIII U. D. 26—1937 R. D. 45.

tenants by prescription. Now their status is defined by sections 205, 206 and 207. They are for purposes of ejectment non-occupancy tenants or tenants holding for undefined terms.

Holders of pasture land, on account of their liability to pay rent, were and are tenants and therefore non-occupancy tenants either holding at will or for fixed terms. They could not acquire occupancy rights. Now they are non-occupancy tenants, liable to ejectment.

*Thekaders* of agricultural land were liable to ejectment as non-occupancy tenants on the expiration of their *thekas*. Now their position is defined in Chapter XI. Land personally cultivated by a *thekadar* while the estate was under the *theka*, was noted as *khudkashit thekadar*, and as he could not be his own tenant in respect of it, he was not a tenant thereof. If he continues in cultivation of such land after the expiration of his *theka*, and the zamindar has admitted him to the tenancy, he is a hereditary and not a non-occupancy tenant. If there is no such admission he retains it without the consent of the landlord, and subject to action under section 180

Mortgagees in possession are in the same position as *thekaders* as regards land personally cultivated by them.

This survey shows that the following fall under the category of non-occupancy tenants under the new Act:—

- (i) Tenants of *sir*.
- (ii) *Singhara* land occupants.
- (iii) Holders of *nautor* land subject to the provisions of section 4(3).
- (iv) Sub-tenants.<sup>1</sup>
- (v) Grove-holders, subject to the provisions of Chapter XI.
- (vi) Pasture land-holders.
- (vii) Tenants by sufferance or holding over.

## CHAPTER IV.

### DEVOLUTION, TRANSFER, EXTINCTION, DIVISION, EXCHANGE AND ACQUISITION OF TENANCIES.

#### *Devolution and transfer of tenancies.*

Interest of permanent  
tenure-holders and  
fixed-rate tenants.      **32.** The interest of a permanent tenure-holder and of a fixed-rate tenant is both heritable and transferable.

This reproduces section 22 of the Agra Act, and in effect section 20 of the Act of 1901.

**Permanent tenure-holder.**—See section 22, **fixed-rate tenant**, see section 23 for meaning.

Section 35 indicates the order of succession. Permanent tenure-holders and fixed-rate tenants have all the rights of owners of immoveable property. They can transfer it in any lawful manner and on death their holdings pass to their heirs according to the personal law.

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<sup>1</sup> *Salamat Ullah v. Wasir Khan*, XX U. D. 362—1939 R. D. 415.

The interest of one of two fixed-rate tenants, members of a joint Hindu family, passes on his death to the survivor and not to his widow.<sup>1</sup> Where a fixed-rate tenant dies heirless, the reversion of the landholder and not the right of the Crown as the *ultimate* heir comes in,<sup>2</sup> and he may redeem a mortgage executed by the deceased, and he must redeem if he wishes to get possession.<sup>3</sup> Surrender or relinquishment would entitle the landholder to redeem. Similar remarks apply to permanent tenure-holders.

**33.** (1) The interest of a tenant holding on special terms in Oudh, of an ex-proprietary tenant, of an occupancy tenant, of a hereditary tenant, and of a non-occupancy tenant is heritable, but is not transferable otherwise than in accordance with the provisions of this Act.

(2) Nothing in the foregoing provisions of this section shall render illegal—

- (a) a sub-lease of a holding as hereinafter provided ;
- (b) a sale of the interest of a tenant under the provisions of section 251 ;
- (c) a release or transfer of an interest in favour of a co-tenant :

Provided that no person shall be deemed to be a co-tenant, notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognized as such in writing by the landholder.

This, with variations, corresponds to section 23 of the Agra Act, 1926, omitting the words " either in execution of a decree of a civil or revenue court or " after " transferable." In Oudh, there was no such section, but section 5 of the Oudh Act, made the interest of an occupancy tenant intransferable, and section 68A restricted the right of subletting of statutory tenants and their heirs.

Section 23 of the Act of 1926 corresponded to subsection (2) of section 20 of the Act II of 1901.

1. **Tenant holding on special term in Oudh**, see section 25 ; **expropriary tenant**, see section 26 ; **occupancy-tenant**, see section 28 ; **hereditary tenant**, see section 29 ; **non-occupancy-tenant**, see section 31 for meaning.

<sup>1</sup> *Sheo Shankar v. Ram Dular*, XV U. D 110=15 L. R. Rev. 319.

<sup>2</sup> *Tulshi Ram Sahu v. Gur Dayal Singh*, 33 All 111.

<sup>3</sup> *Lal Bahadur v. Maharaja of Vizianagram*, 33 I. C. 556 ; *Nand Kishore v. Muh. Hasan*, 29 I. C. 555 ; *Muh. Samiullah v. Charitar*, II U. D. 353 ; *Autar Rai v. Nepal Rai*, II U. D 354.

2. **The interest of a tenant**—That is, the interest of a tenant in the land itself. A right to collect rent from a sub-tenant may be assigned.<sup>1</sup> Where *sir* plots are usufructually mortgaged, a mortgage of the right of redemption is a transfer of the interest of the exproprietary tenant.<sup>2</sup> The interest of a permanent lessee of agricultural land, though declared by the lease to be transferable, cannot be transferred by sale.<sup>3</sup>

3. **Tenant holding on special terms.**—Instances of this often occur in Oudh where agreements or settlement court decrees created or conferred tenancy rights on special terms. Section 5 of the Oudh Act declared occupancy rights under that section to be intransferable but left intact such rights created before 1868. Sometimes hereditary nontransferable leases or occupancy intransferable rights were created. It was held that the interest of such lessees or tenants was not transferable in execution of money decrees,<sup>4</sup> and that the lessee himself could raise the objection of non-transferability.<sup>5</sup> Of course the *taluqdar* could challenge the decree-holder's right to sell.<sup>6</sup>

Even the *taluqdar* could not have the lessee's interest sold in execution of his rent decree.<sup>7</sup> This is bad law now.

Nor was a private transfer of any effect, *e.g.*, a sale of his interest by the lessee, and the purchaser could not sue for possession against the *taluqdar* who had obtained possession,<sup>8</sup> or a usufructuary mortgage<sup>9</sup> (the contrary *dictum* in 2 O. C. 4 was dissented from).

The *taluqdar* to whom the lessee had relinquished the holding could sue the mortgagee in possession for possession<sup>10</sup> and the lessee could, in a suit by the mortgagee for recovery of possession, set up the invalidity of the mortgage.<sup>11</sup>

<sup>1</sup> *Sukhdeo Das v. Panna Lal*, 8 L. R. Rev. 210=VIII U. D. 52=1927 R. C. 226; *Surajpal Singh v. Dilsukh*, 8 L. R. Rev. 259=VIII U. D. 65=1927 R. C. 292; *Kalyan Das v. Panna Lal*, (1926) R. C. 399=7 L. R. Rev. 323=VII U. D. 193.

<sup>2</sup> *Nowrang Singh v. Pheku*, 9 L. R. Rev. 237=IX U. D. (H. C.) 180=116 I. C. 878=12 R. D. 391.

<sup>3</sup> *Tilak Singh v. Sheo Nandan Singh*, 51 All 882=1929 A. I. R. All. 612=27 A. L. J. 861=XI U. D. (H. C.) 41=10 L. R. Rev. 360.

<sup>4</sup> *Mohan Dei v. Bal Makund*, 2 O. W. N. 737=1925 A. I. R. Oudh 702=90 I. C. 256=VII U. D. (H. C.) 11=7 L. R. Rev. 33=1926 R. C. 17=9 R. D. 10; *Nand Ram v. Amanat Fatima*, 6 O. C. 94, (a perpetual farming lease was a hereditary and intransferable lease, although the settlement court did not use the word intransferable), *Muhammad Abdul Karim Khan v. Nawaz Singh*, 12 O. C. 267=3 I. C. 867

<sup>5</sup> *Ib.*

<sup>6</sup> *Nand Ram v. Amanat Fatima*, 6 O. C. 94; *Mohan Dei v. Balmakund*, 1925 A. I. R. Oudh 702=VII U. D. (H. C.) 11.

<sup>7</sup> *Mu. Abdul Karim Khan v. Niwas Singh*, 12 O. C. 267.

<sup>8</sup> *Kanhya Baksh v. Mehdi Ali Khan*, 2 O. C. 204; and cases cited below

<sup>9</sup> *Rameshar Baksh Singh v. Radhey*, 2 O. C. 12.

<sup>10</sup> *Jang Bahadur v. Rae Raja*, 7 O. C. 265, (the lease was created by a settlement court decree before 1868).

<sup>11</sup> *Boni Madho v. Kali Prasad Singh*, 6 O. C. 331; *Tajjan v. Sadho Ram*, 3 L. R. Rev. 443=5 U. D. 169=1922 R. C. 234.

The vendor or transferor or his sons could not sue the purchaser or transferee who had got into possession for recovery of possession, as the interest was not transferable,<sup>1</sup> and the condition of intransferability was solely for the benefit of the *taluqdar*, and not of the transferor, his descendants or creditors. Hence if the *taluqdar* consented to the transfer the transfer was valid<sup>2</sup> as the transfer was voidable at his option.<sup>3</sup> A distinction was drawn between a declaration of intransferability contained in a statute, such declaration making intransferability absolute, and therefore open to objection by anybody, including the transferor, and such a declaration contained in the agreement or decree creating intransferable rights, which declaration was held to be solely for the benefit of the landlord who could avoid it at his option, but the transferor was estopped from pleading intransferability. This will no longer be law.

It was held that the lessee mortgagor himself was estopped from suing to recover possession from the mortgagee on the ground that the mortgage was illegal.<sup>4</sup>

Now the interest of a tenant holding on special terms is made saleable in execution of a decree for arrears of rent. The same applies to expropriatory, occupancy and hereditary tenants.

4. Is heritable, *i. e.*, according to sections 35 to 37.

5. Is not transferable.—The section does not permit any transfer except as provided by the Act. In *Kulsum-un-nisa v. Dauru Lal*<sup>5</sup> the judges did not decide whether an occupancy tenant could by custom have a right of transfer. In *Kulsum-un-nisa v. Bhola Nath*,<sup>6</sup> decided on 19th November, 1929, a single judge negatived this right. The permissible transfers are mentioned in sub-section (2).

Before the Rent Act of 1859, there seems to be no enactment prohibiting transfers of tenancies other than those at will, and, judging from Bengal, it would seem that custom regulated transfers. For instance, a mortgage made in 1834 was held to be valid even under the latter Acts of 1873, 1881 and 1901, and, on the death heirless of the tenant, the landholder was not allowed to obtain possession without redeeming from the mortgagee.<sup>7</sup> As the next paragraph shows, the question of transferability depended on the existence of a custom to that effect, the law being the same as under the Rent Act, 1859, which contained no express prohibition against it.

<sup>1</sup> *Ram Pher Singh v. Ram Khelawan Singh*, 2 O. C. 252; *Tikam Singh v. Bhagwan Din*, XV U. D. (H. C.) 235; *Abdul Ghafur Khan v. Karamat Khan*, X U. D. (H. C.) 1—9 L. R. Rev. 344—4 O. W. N. 1033—106 I. C. 126; *Ram Harakh v. Chail Behari*, 111 I. C. 194—12 B. D. 435.

<sup>2</sup> *Ib. Wasir Muhammad v. Har Prasad*, 15 O. C. 67.

<sup>3</sup> *Gaya Prasad v. Beni Madho*, 1931 A. I. R. Oudh 352—XIII U. D. (H. C.) 83.

<sup>4</sup> *Bridoy Behari v. Parag*, 10 O. C. 235; *Wasir Muhammad v. Har Prasad*, 15 O. C. 67—13 I. C. 613.

<sup>5</sup> 13 A. L. J. 857.

<sup>6</sup> S. A. 1477 of 1929.

<sup>7</sup> *Parshotam Das v. Jasoda*, II U. D. 488.

After the passing of the Rent Act of 1859, the question of transferability of occupancy holdings came up several times before the courts; and the general trend of opinion was that it was not transferable except on definite proof of a custom to that effect in the particular locality.<sup>1</sup>

*Suraj Baksh v. Ajodhia Prasad*<sup>2</sup> decided that foreclosure after 22nd December, 1873 of a mortgage executed in 1871 did not pass any right to the mortgagee. A single judge held that a usufructuary mortgage before 1873 was invalid.<sup>3</sup> The Board of Revenue also considered the matter in several cases. Its view was that such a mortgage was valid as between the parties to it, but it did not bind the landholder, so that on the death heirless of the tenant he could take possession of the holding<sup>4</sup> without redeeming the mortgage in the absence of a proved custom of transferability, and if the mortgagee continued in possession he did so as a tenant-at-will.

As to mortgages effected between 22nd December, 1873 and 31st January, 1901, it was held by a Full Bench of the Allahabad High Court, after some decisions to the contrary, that a usufructuary mortgage of an occupancy holding did not offend section 9 of the Rent Acts of 1873 and 1881, as such a mortgage was a transfer not of the holding itself which was prohibited by section 9, but of the right to occupy.<sup>5</sup> The Full Bench view held the field. The Oudh Court also accepted this subtle distinction.<sup>6</sup> Various complications arose from this view. One is shown by the following. In 1890, *A* mortgaged his zamindari share and *sir* to *B*, and in 1897 usufructuarily mortgaged both to *C*. In 1905 *B* sued on his mortgage and had the mortgaged property sold in execution of his decree and purchased it himself. The result was that *A* became the exproprietary tenant of the *sir* which was however in possession of *C* as mortgagee; and *C*'s possession then became as mortgagee of exproprietary rights, which the High Court declared to be illegal, and *C* was held liable to ejectment at the instance of *B*, a rather curious result.<sup>7</sup> Where the sale under *B*'s mortgage had taken place before 1st January, 1902, a different result was held to ensue and *C*'s mortgage was held to attach to the exproprietary right.<sup>8</sup>

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<sup>1</sup> *Ajodhya Prasad v. Imam Bandi*, 7 W. R. 528, (F. B.); *Nurendra Narain v. Ishan Chander*, 22 W. R. 22, (F. B.)=13 B. L. R. 272; *Bootha Singh v. Murat Singh*, 20 W. R. 478; *Nanku Roy v. Muhabir Prasad*, 1 W. R. 405; *Unno Purna Dassan v. Oma Charan*, 18 W. R. 55; *Shankar Puttes v. Saifoolah*, 18 W. R. 507.

<sup>2</sup> 4 A. W. N. 160.

<sup>3</sup> *Nanku v. Chatarpal*, 12 A. W. N. 59; see also *Manpal Singh v. Raja Pratab Singh*, 44 All. 376=1922 A. I. R. All. 31=20 A. L. J. 18=1V U. D. (H. C.) 1=8 R. and Cr. L. J. 105=1922 R. C. 51.

<sup>4</sup> *Mahabal Singh v. Radha Rawan*, II U. D. 258.

<sup>5</sup> *Khiali Ram v. Nathu Lal*, 15 All. 219 (F. B.); *Ram Das v. Parmanand Gir*, 1931 A. L. J. 162=12 L. R. Rev. 146; *Mahesh Singh v. Ganesh*, 15 All. 231 (F. B.)

<sup>6</sup> *Rameshar Baksh Singh v. Radhey*, 2 O. C. 104.

<sup>7</sup> *Dwarka Prasad v. Khadim Husain*, 9 I. C. 553.

<sup>8</sup> *Shiam Das v. Batul Bibi*, 24 All. 538.

Another complication arose from the fact that at times the mortgagor created several successive usufructuary mortgages over the same subject-matter, by borrowing other sums of money and making the earlier mortgage redeemable only on payment also of the amounts borrowed later. A usufructuary mortgage of an occupancy holding being only a temporary transfer of the right to occupy it possessed by the tenant, there could of course be no subsequent usufructuary mortgage of the same in favour of another person, but where such a mortgage was in favour of the original mortgagee it was regarded as a deed of further charge and valid, necessitating the payment of all the sums secured by the several mortgages as a condition precedent to redemption.<sup>1</sup> This view has not been accepted in a subsequent case.<sup>2</sup>

Act II of 1901 absolutely forbade any transfer of holdings; but this did not affect the validity of usufructuary mortgages effected up to the end of 1901.<sup>3</sup> The Act of 1926 was equally prohibitive and was not retrospective so as to invalidate mortgages validly created before 1902; and so this section. The rulings under Act II are therefore applicable.<sup>4</sup> If under a usufructuary mortgage made before 1902 in Agra the mortgagee did not obtain possession, he could sue for it after 1902;<sup>5</sup> so if he was to get possession under the terms of the mortgage deed on a date subsequent to 31st December, 1901;<sup>6</sup> but not if possession was to be delivered on a contingency, e.g., default in payment, and the contingency occurred after 1901;<sup>7</sup> so if he was dispossessed he could, after 1901, sue for possession,<sup>8</sup> or execute his decree for possession.<sup>9</sup> Courts did not enforce an agreement to execute a usufructuary mortgage,<sup>10</sup> or a mortgage by one of several co-tenants,<sup>11</sup> when the mortgagee had not been put in possession.<sup>12</sup>

A transfer, e.g., a usufructuary mortgage, in contravention of the Act, is absolutely forbidden and cannot be given effect to.<sup>13</sup> It has been

<sup>1</sup> *Har Dayal v. Ganga Koori*, 8 L. R. Rev. 161=102 I. C. 202.

<sup>2</sup> *Lallu Singh v. Ram Nandan*, 52 All. 381=1930 A. L. J. 156=1930 A. I. R. All. 156.

<sup>3</sup> *Bakht Bali v. Sarju*, 1939 A. I. R. All. 236=1939 R. D. (H. C.) 74 (usufructuary mortgage of occupancy holding in 1876 is not invalid.)

<sup>4</sup> See *Bhawani v. Zakariya*, V U. D. 327=4 L. R. Rev. 34=1922 R. C. 462.

<sup>5</sup> *Babu Lal v. Ram Kali*, 3 A. L. J. 40=26 A. W. N. 28; *Harbans Rai v. Srinivas Rai*, 8 A. L. J. 1301=12 I. C. 631; *Ram Pragas v. Sooba*, 32 All. 428=7 A. L. J. 755=6 I. C. 837; *Bhika v. Umrao Singh*, 5 I. C. 82.

<sup>6</sup> *Jhamman v. Lal Gajendra Singh*, XII U. D. 120.

<sup>7</sup> *Har Nandan Rai v. Nakkchedi*, 3 A. L. J. 691=26 A. W. N. 302.

<sup>8</sup> *Brij Mohan v. Algu*, 26 All. 78, *Contra, Najaf Khan v. Girdharia*, 32 I. C. 593 (A).

<sup>9</sup> *Rangi Lal v. Kishori Lal*, 37 All. 278.

<sup>10</sup> *Surju v. Wazir*, 21 A. W. N. 11.

<sup>11</sup> *Ram Charan v. Raghubar Sahai*, 2 U. P. L. R. (B. R.) 80; *Sharif v. Ilahi Khan*, XVI U. D. 675=1935 R. D. 579.

<sup>12</sup> *Partab Bahadur v. Muzhar Khan*, XVIII U. D. 183=1938 R. D. 268.

<sup>13</sup> *Banmali v. Bisheshwar*, 3 A. L. J. 731=26 A. W. N. 300; *Ram Sarup v. Kishenlal*, 4 A. L. J. 306, and is not validated even by the landholder's consent; *Nand Kishore v. Batuk Prasad*, 1922 R. C. 59=8 Rev. and Cr. L. J. 116. The observations of Aikman J. in *Laluram v. Thakur Das*, 2 A. L. J. 156, were *obiter* and do not lay down the correct law.



held that a subsequent mortgagee whose mortgage came into existence after 1901 cannot redeem a mortgage created before.<sup>1</sup>

If a mortgagee after the commencement of the Act of 1901 re-lets the land to the mortgagor, he cannot sue the latter for arrears of rent.<sup>2</sup> A mortgagee under a forbidden mortgage acquires no rights whatsoever as against a subtenant already in possession.<sup>3</sup>

A transfer to the landholder himself, if it is not a surrender, is illegal.<sup>4</sup> So an exchange of tenancy land by its tenant with the land of a co-sharer in the mahal.<sup>5</sup> So a gift by an occupancy tenant of his holding to a co-sharer is void, and the co-sharer if he takes possession does so as of *khudkasht*.<sup>6</sup>

Absolute intransferability and voidness or illegality of transfer attached to occupancy tenancies created by section 5, Oudh Act.<sup>7</sup>

Under the earlier Acts of 1873 and 1881 it was held that a sale of occupancy rights with the consent of the landholder was binding on him.<sup>8</sup>

A Hindu widow was the occupancy tenant of land actually cultivated by A. She being unable to look after the cultivation or to pay the rent it was agreed between her and A the landlord, that A should pay the arrears and be recognised as the occupancy tenant along with the widow. This was held to be bad in law, and A and the widow were held to be statutory tenant.<sup>9</sup>

When a landholder has in the past allowed transfers of an occupancy holding to take place, he is not estopped from treating the last transfer as invalid.<sup>10</sup>

Where a tenant creates a mortgage over his holding and grants a lease of the same to the mortgagee, the whole transaction is null and void.<sup>11</sup>

<sup>1</sup> *Banmali v. Bisheshar*, 3 A. L. J. 731; *Bishen Chand v. Beni Prasad*, 6 A. W. N. 148. See also *Usaf Ali v. Sarwan*, 13 All. 403=11 A. W. N. 141.

<sup>2</sup> *Ram Sarup v. Kishen Lal*, 4 A. L. J. 306.

<sup>3</sup> *Ram Prasad v. Sital*, VII U. D. 141=7 L. R. Rev. 194=19 R. D. 493.

<sup>4</sup> *Badri v. Sudanand*, 10 A. L. J. 176=19 Ind. Ca. 981. The contrary view was taken in Oudh in cases of transfers of occupancy rights, *Bindra Prasad v. Rajendra Prasad*, 10 O. C. 235; *Ashiq Ali v. Ghulam Sarwar*, 7 L. R. Rev. 44=VII U. D. (H. C.) 25=1926 R. C. 10=9 R. D. 22=1925 A. I. R. Oud. 742; *Mithan Kuar v. Behsa*, 10 O. C. 345.

<sup>5</sup> *Maharaj Singh v. Megh Narain Singh*, 12 L. R. Rev. 189.

<sup>6</sup> *Mukadam Rai v. Bindeswari Rai*, XVI U. D. 315.

<sup>7</sup> *Tikam Singh v. Bhagwan Din*, XV U. D. (H. C.) 235; *Abdool Ghaffoor Khan v. Karamat Khan*, X U. D. (H. C.) 1=9 L. R. Rev. 344=4 O. W. N. 1033=106 I. C. 126.

<sup>8</sup> *Durga v. Jhinguri*, 7 All. 511=5 A. W. N. 135.

<sup>9</sup> *Laratu v. Bhawan Singh*, XII U. D. 254=15 R. D. 659.

<sup>10</sup> *Sheo Shankar Singh v. Batuk Prasad*, 1 U. P. L. R. (B. R.) 1.

<sup>11</sup> *Pooran Singh v. Jai Singh*, 17 I. C. 522.

Since transfers are prohibited, it follows that the maxim in *pari delicto* applies. A mortgagee will not be entitled to sue for possession of the holding on title, though he may under section 9, Specific Relief Act,<sup>1</sup> or for the mortgage-money on being evicted by a third person,<sup>2</sup> or for rent due from a person let in by him, when the latter has paid the rent to the tenant.<sup>3</sup> Nor will the tenant, if possession is with the mortgagee, be entitled to recover possession without refunding the consideration,<sup>4</sup> or to eject the mortgagee under section 175.<sup>5</sup>

Under Act II of 1901, it was held that though a usufructuary mortgage of an occupancy holding was not permitted, a sub-mortgage of his interest by the mortgagee was not against the law, and the sub-mortgagee though he could not recover possession could sue for the money due,<sup>6</sup> and could be redeemed by the mortgagee or a transferee from him.<sup>7</sup> This is not true now, as section 21 of the Act of 1901, on which these rulings proceeded has not been re-enacted. A mortgagee under a mortgage made before 1902 may transfer his interest absolutely,<sup>8</sup> and if his rights as mortgagee are attached in execution of a decree against him, the right to pay off the decree belongs to the transferee of the mortgagee rights before the Act and not to a transferee after the Act.<sup>9</sup>

The section does not prevent the mortgagor from being honest and paying the money to redeem an illegal mortgage.<sup>10</sup> An illegal transfer

<sup>1</sup> *Sheo Zor v. Kausilla*, 9 Rev. and Cr. L. J. 28=V D. D. (H. C.) 114=1920 R. C. 550; *Ganesh Rai v. Bhusi*, 5 L. R. Rev. 273=VI U. D. 252.

<sup>2</sup> *Daya Ram v. Thakuri*, 46 All. 622=VI U. D. (H. C.) 108=22 A. L. J. 506=10 Rev. and Cr. L. J. 208. This view has been repudiated by three judges, *Dip Narain Singh v. Nageshar Prasad*, 52 All. 388=1930 A. L. J. 45.

<sup>3</sup> *Ata Husain v. Ramman Lal*, 78 I. C. 539; *Puttu Lal v. Lodhi*, XVII U. D. 284=1936 R. D. 284.

<sup>4</sup> *Bahoran Upadhiya v. Uttamgir*, 33 All. 779=8 A. L. J. 231=12 I. C. 112; *Rup Singh v. Beera*, 29 I. C. 490; *Bhupat v. Data Ram*, V U. D. 349=4 L. R. Rev. 94=9 R. and Cr. L. J. 125; *Kuber Singh v. Ram Chandra*, 1936 A. L. J. 406=XVI U. D. 651=1935 R. D. 494; *Sasti Din v. Bansidhar*, 4 L. R. Rev. 67=V U. D. 340=7 R. D. 332.

<sup>5</sup> *Pitai v. Karedin Singh*, B. R. 2 of 1933=XIV U. D. (B. R.) 23; *Jafri v. Ghiran Singh*, 14 L. R. Rev. 297; *Har Saran Pathak v. Abdulla Khan*, XVIII U. D. 62=1937 R. D. 58.

<sup>6</sup> *Balgobind Bhagat v. Nagina*, 35 All. 405; *Ram Sarup v. Ram Dular*, 6 L. R. Rev. 123=11 Rev. and Cr. L. J. 146=VI U. D. (H. C.) 454=(1925) R. C. 135.

<sup>7</sup> *Ram Pragas v. Sooba*, 32 All. 628=7 A. L. J. 753.

<sup>8</sup> *Muh. Zaid v. Girdhari*, 7 L. R. Rev. 159=12 Rev. and Cr. L. J. 175=1926 R. C. 201=VII U. D. 145.

<sup>9</sup> *Gopi Nath v. Gobind*, 1934 A. I. R. All. 360=17 R. D. 983.

<sup>10</sup> *Ramzan v. Bhukhal Rai*, 16 A. L. J. 747=4 Rev. and Cr. L. J. 215; *Raj Rani v. Gulab*, 1928 A. I. R. All. 552=117 I. C. 831=IX U. D. (H. C.) 118.

does not without a suit terminate the tenancy. If before such suit, the transfer is cancelled or comes to an end, the tenancy subsists.<sup>1</sup> The mortgage being invalid, the landholder to whom the tenancy has reverted on the death heirless of the tenant, or on his ejection, is not bound to redeem the mortgage, but if he is so minded, there is nothing in law to bar him.<sup>2</sup>

A well on a holding is not transferable.<sup>3</sup>

*Covenants in mortgages.*—Mortgages may be of various types, the principal ones, so far as occupancy holdings are concerned, being :—(i) A simple mortgage of an occupancy holding alone, containing the usual express or implied covenant to repay, and, in default of repayment, empowering the mortgagee to sell the property mortgaged i.e., the occupancy holding ; (ii) a mortgage by conditional sale of an occupancy holding ; (iii) a usufructuary mortgage of the holding (a) by delivery of possession, or (b) expressly or by implication binding the mortgagor to deliver possession of the holding to the mortgagee ; (iv) a combination of (i) and (iii) or of (ii) and (iii) ; (v) a simple or conditional mortgage of an occupancy holding and of some transferable property ; (vi) a usufructuary mortgage of an occupancy holding and of some transferable property, (vii) a combination as in (iv). The remarks made below apply to mortgages made in Agra after 22nd December, 1873, for, as shown above, there seems to have been no restriction on transfers of holdings prior to that date.

Before proceeding further, two recent three-judge decisions must be noticed.

In the case of *Dip Narain Singh v. Naqeshar Prasad*<sup>4</sup> which was a suit under section 68, T. P. A., the High Court passed most of the earlier cases under review. The facts were these :—In 1905, A borrowed money from B and executed a document by which he promised to pay interest on the loan periodically and regularly, and in default covenanted to put B in possession, by way of security for the loan, of (a) certain zamindari property, (b) of certain zamindari property which A held as mortgagee, and (c) a very small area of A's occupancy land. It was also provided that A's mortgagor could redeem from B the land mortgaged to him, and that if there was any dispossession of B from the zamindari land or from the sub-mortgaged land, B could realise the principal and interest in a lump sum. A received the mortgage money and released the lands mortgaged, but did not pay the amount received to B ; nor did he, after a time, pay the agreed interest or deliver possession of any part of the property to B. B therefore sued A under section 68, T. P. A., on the allegation that the security had become insufficient on account of A keeping the money received on

<sup>1</sup> *Durga v. Jugrup*, 1928 R. C. 213=79 I. C. 232.

<sup>2</sup> *Basdeo Singh v. Jai Mangal Rai*, 1931 A. L. J. 914.

<sup>3</sup> *Sukhdeo v. Donger*, 1935 A. L. J. 490=XV U. D. (H. C.) 34=15 L. R. Rev. 144=18 R. D. 94.

<sup>4</sup> 52 All. 338 (F. B.)=1930 A. L. J. 45=1930 A. I. R. All. 1=122 I. C. 872=14 R. D. 46.

redemption of the property mortgaged to and sub-mortgaged by him. *B* gave up the entire mortgage security and confined his claim to recovery of the money lent. *A* pleaded that as part of the security offered was occupancy land, the whole transaction was illegal and section 24, Contract Act, barred the recovery of the money. Mr. Justice Sulaiman held that the first obligation of *A* was to pay interest, and, on default in doing so, his second obligation to put *B* in possession arose, and that in case of dispossession, the right to recover the principal and interest in a lump sum came into view, and that this was not in any way dependent upon non-receipt of possession or upon dispossession from the occupancy land, as the deed expressly limited the right to sue for the money to dispossession from lands which were transferable (and not from the occupancy land). He ruled that there was nothing in law against the maintenance of such a suit and decreed it. He observed that an agreement or contract is different from a transfer and that when once an interest in property has passed by transfer, only such provisions of the Contract Act as are made expressly applicable by the Transfer of Property Act would apply, and since the document of 1905 passed an interest to *B* in the properties indicated therein, section 23 or section 24, Contract Act, did not apply unless the Transfer of Property Act or the Agra Tenancy Act expressly said so.<sup>1</sup> Section 6(b) of the Transfer of Property Act lays down that no transfer can be made for an unlawful object or consideration within the meaning of section 23, Contract Act, and further declares that nothing in the section would authorise a tenant having an intransferable right of occupancy to assign his right as such tenant. The learned judge then observed that section 23, Contract Act, makes the consideration or object of an agreement unlawful where it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law. For this purpose he examined sections 20 and 21, Agra Tenancy Act, 1901, and observed "it is quite clear that the transfer of occupancy land has been merely declared to be void on the ground of the incompetency of the tenant to make the transfer and has not been actually forbidden or prohibited by law or declared to be otherwise illegal." It is said that section 20 merely makes the interest of an occupancy tenant not transferable, i. e., incapable of passing from the tenant, and that section 21 only declares that when an interest is not transferable, the tenant "shall be incompetent to transfer his holding." He also noted that there was a distinction between a contract forbidden by law and a void contract; and that the transfer of the interest of an occupancy tenant was not forbidden by law but was merely declared to be void; and that if the effect of enforcing the contract would be to defeat the provisions of any law, the contract would undoubtedly be void, but if it consisted of several parts which could be separated the whole transaction would not be bad, unless section 24, Contract Act, applied. Sulaiman, J., then proceeded, "in most cases of simple mortgages there is a primary undertaking to repay the loan and there is a material security offered for the realisation of the amount in case of

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<sup>1</sup> This was followed in *Raghu Nath Rai v. Lachman Rai*, 1934 A. I. B. All. 246—1934 A. L. J. 1193—XV U. D. (H. C.) 138—15 L. R. Rev. 452.

failure of payment If the security offered includes intransferable properties there is nothing to prevent the creditor from giving up the security altogether and claiming payment of his money by enforcement of the personal covenant. Such a personal covenant is by no means illegal. On the other hand in most usufructuary mortgages the primary obligation is to put the mortgagee in possession and the right to recover the loan only accrues after there is a failure to deliver up possession. If the mortgagor has promised to mortgage non-transferable properties, which promise cannot be enforced in a court of law, the creditor cannot be allowed to say that the mortgagor has broken his contract, because he has failed to perform that which he was by law not bound to perform. If there has been not such a failure the creditor's claim to recover the money on the ground of such a supposed failure cannot be entertained. It seems to me that if the mortgagee's right to recover the money is under the terms of the document dependent only on the failure of the mortgagor to hand over possession of his occupancy lands which are not transferable, the right cannot be enforced. But if the right to recover the money is based on a primary undertaking to repay the loan and is independent of and separable from the collateral security offered, such a promise may be enforced if it is contained in a deed of transfer which actually affects transfer of some property not disallowed by law.....But if the mortgaged property consist wholly of tenancies which are not transferable in law, the transfer as such is absolutely void and there is no mortgage transaction. The transaction is merely one of contract between the parties evidenced by a registered instrument, which would be governed exclusively by the provisions of the Contract Act, and section 24 of the Act may apply, unless the security offered can be separated from the personal covenant."

Mr. Justice Mukerji delivered a separate judgment on much the same lines and cited most of the earlier cases. He agreed with 38 All. 232, 39 All. 539, but disagreed with the application of section 24, Contract Act, in 16 I. C. 42, 17 I. C. 522, 18 I. C. 9, and differentiated 35 I. C. 302 and 45 All. 621 which followed it, 43 All. 81, 44 All. 386, 46 All. 622, 47 All. 780 and 25 A. L. J. 793. King J, agreed with the two judges.

A similar view was taken by a single judge in *Gauri Dutt Pandey v. Bandhu*.<sup>1</sup>

The case of *Bhusi Rai v. Ganesh Rae*,<sup>2</sup> another three-judge decision, may also be noticed here. There was a pure usufructuary mortgage of an occupancy holding providing that in the case of dispossession, the mortgagee would be entitled to recover possession with damages calculated at a certain rate; and in the alternative he could recover the mortgage money with interest from the date of dispossession; and that the occupancy holding and two houses were to be deemed hypothecated to secure the principal money and the damages or interest provided for. It was held that this usufructuary mortgage being invalid, the subsidiary

<sup>1</sup> U. D. (II C.) 212—10 L. R. Rev. 267.

<sup>2</sup> 25 A. L. J. 793 (F. B.)—103 I. C. 160.

covenants to pay principal and interest or damages secured by the hypothecation of two houses was also bad.

Now in view of these decisions, let us consider, each of the seven positions mentioned above.

(i) *A simple mortgage of an occupancy holding.*—The covenant authorising to sell on default in payment was unenforceable under the Acts of 1873, 1881 and 1901, and is unenforceable now. If there was or is no personal covenant for payment except out of the property mortgaged, the deed is altogether void. If there is such covenant it usually precedes the hypothecation, and according to the view in *Dip Narain Singh v. Nageshwar Prasad*,<sup>1</sup> such a covenant would be enforceable, when the mortgagee sues for his money only and gives up the mortgage security.<sup>2</sup>

A difficulty may arise as to an implied covenant to pay which is deemed to be part of a simple mortgage. In the absence of an express covenant, an implied covenant is only to the effect that if the mortgage money is not realised from the sale of the mortgaged property, the mortgagee will have the right to recover it personally from the mortgagor i. e., its enforcement is dependent on the security proving insufficient. Hence, it is submitted, that under the ruling already cited, a simple mortgagee will not be entitled to sue only on the implied personal covenant after giving up his security.

In *Dasrath v. Sandala*,<sup>3</sup> two judges of the Oudh Court held that the mortgage of a simple tenancy was unlawful, and the mortgagee was not entitled to the return of the mortgage money, unless the amount mentioned in the deed as consideration constituted an independent transaction of loan between the parties.

In Oudh, a mortgage of an exproprietary holding was against section 7A (3) read with section 5, of the Oudh Act, and was held to be void *ab initio*, and the mortgagee could not get a simple money decree for the amount advanced by him.<sup>4</sup> This is opposed to *Usman Khan v. Sitara Khan*.<sup>5</sup>

(ii) *A conditional mortgage of an occupancy holding.*—Since it is an ostensible sale, it is bad in law, and a suit for foreclosure would fail.

(iii) *A usufructuary mortgage of an occupancy holding.*—Such a mortgagor may put the mortgagee in possession at once or provide that the mortgagor shall pay the interest and refund part of the principal or

<sup>1</sup> 52 All. 338 (F. B.) cited above.

<sup>2</sup> This seems to have been the view of Dalal J. in *Sheo Narain v. Raj Kumar*, 1929 A. L. J. 479.

<sup>3</sup> VII U. D. (H. C.) 77=7 L. R. Rev. 81=3 O. W. N. 217=10 B. D. 539. So in *Mahadeo Singh v. Pudas*, IX U. D. 83=9 L. R. Rev. 260; *Jang Bahadur v. Rae Raja*, 7 O. C. 265.

<sup>4</sup> *Mu'h. Muzaffar Husain v. Madad Ali*, 1931 A. I. R. Oudh 30=XII U. D. (H. C.) 67

<sup>5</sup> 1935 A. L. J. 339=XVI U. D. 125.

both at stated intervals, and on default of such payment the mortgagee would be put in possession, and further that on failure to put the mortgagee in possession, the latter will be entitled to recover his money personally from the mortgagor. The two cases in which the mortgagee is empowered to realise personally are on failure to deliver possession and dispossession and since the only security is the occupancy holding which is intransferable, no mortgage arose and the deed is a registered deed of contract for the payment of money. Section 24, Contract Act, would therefore apply to a suit to recover money for failure to deliver possession unless the security can be severed from the covenant to pay. This was the view in *Dip Narain Singh v. Nageshwar Prasad*,<sup>1</sup> already cited. A similar view, though not on the same line of reasoning, was adopted in the cases noted in the footnote.<sup>2</sup>

The same holds good where the suit under section 68 (a), T. P. A., is based on the allegation that the mortgagee has been deprived of possession and the mortgage deed expressly provides for a personal decree in such a case.<sup>3</sup>

Some variations of this class of cases should be noticed. Suppose the mortgagor covenants that in case of the mortgagee not being put in possession or of his being dispossessed, he would be entitled to recover his money from some other specified transferable property. The decision would be similar, and a suit to recover from such other property would be unenforceable.<sup>4</sup> The case of *Bhusi Rai v. Ganesh Rai*<sup>5</sup> comes under this variation; and as we have seen was decided in a similar way.

(iv) *Combination of (i) or (ii) or (iii) and (iv) types of mortgages.*—The remarks as to types (i), (ii) and (iii) will apply.

(v) *Simple or conditional mortgage of occupancy holding and other transferable property*—The case in 52 All. 338 and the cases noted below in (vi) show that there is no reason why the mortgage should not be enforced as regards the transferable property,<sup>6</sup> unless in any particular case the result may be to give effect to the whole mortgage. Of course a sale of occupancy land and transferable property will be enforced as to the latter.<sup>7</sup>

<sup>1</sup> 52 All. 338 (F. B.)

<sup>2</sup> *Ram Partab v. Ramphal*, 18 I. C. 9 (right to sue for money on failure to deliver possession); *Kanhai v. Tilak*, 16 I. C. 24. A contrary view was taken in *Jarbudhun v. Badri*, 45 All. 621=21 A. L. J. 480; *Muh. Shakur v. Gopi*, 35 I. C. 202.

<sup>3</sup> *Dip Narain Singh v. Nageshwar Prasad*, 52 All. 338 (F. B.); *Har Prasad Tiwari v. Sheo Gobind*, 20 A. L. J. 318=V U. D. (H. C.) 80=1922 R. C. 138; *Pooran Singh v. Jas Singh*, 17 I. C. 522; *Daya Ram v. Thakuri*, 46 All. 622=22 A. L. J. 506; *Makund Lal v. Sunita*, 1931 A. I. R. All. 461=132 I. C. 422.

<sup>4</sup> *Tulshi Ram v. Sat Narain*, 43 All. 81=18 A. L. J. 703=IV U. D. 766.

<sup>5</sup> 25 A. L. J. 793 (F. B.)=103 I. C. 160.

<sup>6</sup> *Rajendra Prasad v. Ram Jatan Rai*, 39 All. 539; *Ram Karan v. Raja Ram*, 5 L. R. Rev. 225.

<sup>7</sup> *Bajrang Lal v. Ghura Rai*, 38 All. 232.

(vi) *Usufructuary mortgage of occupancy and transferable property.*—The three-judge case in 52 All. 338 cited above comes really under this heading. If there is a personal covenant to pay and in default possession is to be given, there is no reason why the mortgagee should not recover his money from the other property. If he is entitled to recover money on dispossession from the transferable property, he may sue under section 68, T. P. A. But if he retains the occupancy holding, he cannot recover the transferable property as that would amount to giving effect to the entire transfer, part of it being illegal.<sup>1</sup>

(vii) *Combination of two types of mortgages of occupancy land and transferable property.*—The remarks as to types (v) and (vi) apply.

6 **Transfers**—Acts 18 of 1873 and 12 of 1881 rendered void the terms of any will existing at the date of the passing of those Acts, which contravened the prohibition against transfer by will which was thereby enacted.<sup>2</sup> Now a will is not a transfer,<sup>3</sup> although a tenant cannot regulate succession to his holding by will.<sup>4</sup>

Causing mutation of names is a transfer<sup>5</sup>. So is an exchange,<sup>6</sup> or a gift.<sup>7</sup>

Though an usufructuary mortgage or a lease was taken to be a transfer under this section, a mere hypothecation was not.<sup>8</sup> The Oudh Court did not consider a perpetual sublease a transfer prohibited by section 5 of the Oudh Rent Act.<sup>9</sup>

Acceleration of succession is not an illegal transfer.<sup>10</sup> Nor mere entry of names as a co-sharer,<sup>11</sup> nor partition between co-tenants.<sup>12</sup>

<sup>1</sup> *Sital Rai v. Khelawan*, 47 All. 780—23 A. L. J. 521—VI U. D. (H. C.) 514—6 L. R. Rev. 183—1925 R. C. 354.

<sup>2</sup> *Mahadeo v. Drigpal*, 41 All. 356—17 A. L. J. 381.

<sup>3</sup> *Kallu v. Ganqa Ram*, 5 L. R. Rev. 179—10 Rev. and Cr. L. J. 233—VI U. D. (H. C.) 113; *Deo Narain Singh v. Jagat Narain Singh*, 8 L. R. Rev. 261—103 I. C. 237—VIII U. D. (H. C.) 238—1927 R. C. 281; *Nageshar Murao v. Bhikhi*, X U. D. (H. C.) 71—1928 R. C. 411—111 I. C. 718.

<sup>4</sup> *Ib.*

<sup>5</sup> *Shambhu v. Jagat*, 6 A. W. N. 305; *Diwan Singh v. Kuar*, 2 U. P. L. R. (B. R.) 47—6 Rev. and Cr. L. J. 205. Contra, *Kesho Prasad Singh v. Sonjhari*, 12 Rev. and Cr. L. J. 132—1926 R. C. 163.

<sup>6</sup> *Lachman Das v. Muhammad Yusuf Khan*, 13 A. L. J. 783.

<sup>7</sup> *Muhammad Junaid v. Abdul Wahid*, XVI U. D. 177.

<sup>8</sup> *Badri v. Parbat*, 5 All. 121—2 A. W. N. 128.

<sup>9</sup> *Baij Nath v. Kulpa Desi*, 2 O. C. 292.

<sup>10</sup> *Shah Muh. Zahoor Alam v. Amjad*, III U. D. 226; *Jang Bahadur v. Shambhu Bahadur*, 8 L. R. Rev. 249—VIII U. D. 64—1927 R. C. 269; *Bhaiya Chandrabhan Dutt v. Dulari*, IV U. D. 295.

<sup>11</sup> *Dasoda v. Uthar-ija of Vizianagram*, B. R. 3 of 1913.

<sup>12</sup> *Ramman Singh v. Dilla Singh*, 1929 A. I. R. Oudh 334—10 U. D. (H. C.) 156—XI U. D. (H. C.) 123—114 I. C. 803.



Appointment of a receiver in execution of a decree is not a transfer.<sup>1</sup> It has, however, been held that an occupancy or exproprietary holding does not vest in the receiver in insolvency. It has also been held that a receiver cannot be appointed in execution of a decree in respect of an occupancy or exproprietary holding.<sup>2</sup> The two views are hardly consistent.<sup>3</sup>

The receiver cannot assign the rents in advance which may be payable by sub-tenants,<sup>4</sup> and the landholder may execute his decree for arrears of rent by ejectment of the tenant without leave under section 28, Provincial Insolvency Act<sup>5</sup>

Surrender or abandonment is allowed, but a covenant to surrender is invalid. See notes to sections 82 and 87.

*Rent from transferee.*—Though a tenant cannot transfer, there is nothing to prevent the landholder from recognising the transferee as his tenant, in place of the transferor from the date of the transfer. This he can do expressly, or by receiving rent from the transferee.<sup>6</sup> The transferee cannot refuse to pay rent, if the landholder elects to treat him as a tenant and to demand rent.<sup>7</sup> If the mortgagee is not recognised as tenant, the landholder cannot sue him for rent.<sup>8</sup>

The status of such a transferee was that of a non-occupancy tenant.<sup>9</sup> But unless the landholder consented to take him as tenant, he could not acquire statutory rights. The landholder was estopped from subsequently impeaching the transfer.<sup>10</sup>

<sup>1</sup> *Kirtarathgir v. Mathura Prasad*, 46 All. 924=1925 A. L. R. All. 72=81 I. C. 741=VI U. D. (H. C.) 332.

<sup>2</sup> *Amir Uddin v. Panchaiti Akhara*, 1937 A. L. J. 267=XVIII U. D. (H. C.) 81=1937 R. D. 210.

<sup>3</sup> *Bhola Nath v. Chunni Lal*, 1931 A. L. J. 680=1932 A. L. R. All. 41=XII U. D. (H. C.) 157=12 L. R. Rev. 200; *Mata Prasad v. Ram Adhin*, XV U. D. 503; *Sagar Mal v. Gir Raj Singh*, 39 All. 120.

<sup>4</sup> *Bhola Nath v. Chunni Lal*, 1931 A. L. J. 680=XII U. D. (H. C.) 157.

<sup>5</sup> *Raghu Nandan Singh v. Bhupal Gir*, 1937 A. L. J. 405=XVIII U. D. (H. C.) 79=1937 R. D. 216.

<sup>6</sup> *Allender v. Dwarkanath*, 15 W. R. 320; *Ameen Bakhsh v. Bhyro*, 22 W. R. 493; *Raghubar v. Kidar*, 12 A. W. N. 107; *Kidar v. Raghubar*, B. R. 2 of 1888, *Jhingurs v. Durga*, 7 All. 878=5 A. W. N. 260; *Altat v. Dulia*, 2 A. W. N. 138.

<sup>7</sup> *Gobind Chunder v. Kristokanto*, 14 W. R. 273; *Koloo Mier v. Bhyro Kulwar*, 2 N. W. P. H. C. Reports 258.

<sup>8</sup> *Kishun Dayal v. Ravi Partab Narain Singh*, 22 A. L. J. 232=78 I. C. 389=5 L. R. Rev. 209=1924 R. C. 23=10 Rev. and Cr. L. J. 258=VI U. D. (H. C.) 222.

<sup>9</sup> *Jagannath v. Sadho*, 2 A. W. N. 54; *Bhagirathi v. Rabi Partab Narain Singh*, 1 U. P. L. R. (B. R.) 10=III U. D. 271; *Kripanath v. Dayalchand*, 22 W. R. 169; *Dewan Singh v. Kuar*, 2 U. P. L. R. (B. R.) 47; *Behari Lal v. Kausila*, 1 L. R. Rev. 40; *Dulara v. Nurain Singh*, XIX U. D. 23=1938 R. D. 18.

<sup>10</sup> *Ram Dayal v. Bhajan*, B. R. 14 of 1893. See *Ram Subhag v. Kesho Prasad Singh*, 10 Rev. and Cr. L. J. 263.

Where a zamindar takes a mortgage of a holding in the name of his son or mukhtar, he will not be allowed to ignore the mortgage and eject the mortgagee.<sup>1</sup>

No *pre-emption* can be claimed on a sale or transfer of exproprietary rights.<sup>2</sup>

The mortgagor cannot eject the mortgagee as a sub-tenant through a revenue court.<sup>3</sup>

*Damages.*—The landholder cannot sue the transferee for damages.<sup>4</sup>

7 **Trees.**—As trees on holdings partake of the character of the land on which they stand, they are also intransferable except as provided by section 33 for instance, they cannot be sold in execution of a decree.<sup>5</sup> The fact that the trees were planted by the tenant with the consent of the landholder is immaterial.<sup>6</sup> A village custom may make the trees transferable. The prohibition seems to apply to timber, and ornamental or non-fruit-bearing trees. A hypothecation of fruit-bearing trees, *e. g.*, orange, mango, guava, etc., will be looked upon as hypothecation of an ordinary crop and not a transfer of the tenancy which is prohibited.<sup>7</sup>

8. **Decree.**—The interest of an occupancy, exproprietary, statutory or non-occupancy tenant cannot be sold in execution of a decree which is not for arrears of rent,<sup>8</sup> and if sold, the purchaser gets nothing;<sup>9</sup> nor can possession be given in execution of a decree for foreclosure or otherwise. Even a decree for sale or foreclosure on a mortgage cannot be passed.<sup>10</sup> Such a decree if passed, cannot be executed by sale or delivery of possession of the holding,<sup>11</sup> and if it is so executed, the purchaser or mortgagee or decree-holder gets nothing.<sup>12</sup> In *Bisheshar v. Sukhdeo*<sup>13</sup> the Court was

<sup>1</sup> *Kundan Lal v. Jai Singh*, 1923 R. C. 120=V U. D. 515=10 Rev. and Cr. L. J. 36=4 L. R. Rev. 342.

<sup>2</sup> *Porshadi v. Sadhari*, 5 A. W. N. 220.

<sup>3</sup> *Bhagwan Singh v. Bhirugh Singh*, IV U. D. 289.

<sup>4</sup> *Banno v. Mathura*, 6 A. W. N. 72.

<sup>5</sup> *Janki v. Sheodhar*, 23 All. 211=12 A. W. N. 52; *Kausalia v. Gulab*, 12 All. 297=10 A. W. N. 72; *Jugal v. Deoki*, 9 All. 88=6 A. W. N. 390; *Ajodhya v. Sital*, 3 All. 567=1 A. W. N. 30; *Deoki Nandan v. Dhian Singh*, 8 All. 467=6 A. W. N. 192; *Imdad v. Bhagirathi*, 10 All. 159=8 A. W. N. 132.

<sup>6</sup> *Nawal v. Ganesh*, 19 A. W. N. 25.

<sup>7</sup> *Lalman v. Mannu*, 3 A. W. N. 175.

<sup>8</sup> *Bhola Nath v. Chunni Lal*, 1931 A. L. J. 680=XII U. D. (H. C.) 157.

<sup>9</sup> *Chuni v. Biri Singh*, 41 All. 346=17 A. L. J. 302.

<sup>10</sup> See *Murli v. Ledri*, 7 All. 851=5 A. W. N. 264; *Suraj Baksh v. Ajudhya*, 4 A. W. N. 160; *Durga v. Gokul*, 1 A. W. N. 31; *Lalta Dai v. Bhawani*, 14 A. W. N. 37.

<sup>11</sup> *Katwari v. Sita Ram*, 43 All. 547=19 A. L. J. 473=IV U. D. 723=63 I. C. 264.

<sup>12</sup> *Khiali Ram v. Zahur*, 2 A. L. J. 358; *Sukru v. Tafazzul*, 16 All. 308=14 A. W. N. 130; *Madanlal v. Sayid Muhammad*, 3 A. L. J. 476=26 A. W. N. 182; *Mulchand v. Bhupendra*, 10 A. W. N. 69; *Wahida v. Bulaki*, 26 A. W. N. 140; *Bahadur Singh v. Chitar Mal*, II U. D. 751.

<sup>13</sup> 8 A. W. N. 41.

held not to be competent to entertain an objection that an occupancy holding ordered to be sold in execution of a decree on a mortgage, which was illegal is not legally transferable. So in *Madholal v. Katwari*,<sup>1</sup> see also *Ramgorind v. Gulzari*;<sup>2</sup> *Jagraj v. Harbans*<sup>3</sup> and *Junki v. Ram Gulam*<sup>4</sup> which cases held that when a decree for sale on a mortgage of *sir* and zamindari is passed there is nothing to prevent the decree-holder from selling the *sir* alone. The Full Bench, in *Naik Ram v. Murlidhar*<sup>5</sup> came to the conclusion that the court can entertain such an objection when an occupancy holding was attached in execution of a simple money decree. So in *Chunni Lal v. Biri Singh*,<sup>6</sup> *Katwari v. Sita Ram*.<sup>7</sup> In *Jagannath v. Bhaurani*,<sup>8</sup> a proprietor mortgaged his zamindari and grove. He lost the former and became exproprietary tenant of the grove. It was held that as the mortgagor could not derogate from his grant, the grove could be sold in execution of the decree on the mortgage. In *Ranoo Lal v. Kishori Lal*,<sup>9</sup> a decree for possession on an usufructuary mortgage of an occupancy holding was obtained in 1912 after the rejection of a plea that the mortgage could not be given effect to in view of section 20 2) of Act II of 1901. In execution the same plea was held to be futile and untenable, as the mortgage when made was good and an executing court could not go behind the decree. In *Deodatt v. Ram Charittar*,<sup>10</sup> a mortgagor, after the sale in execution under the mortgage decree, was held incompetent to plead that the land was his occupancy holding. Where land said to be occupancy has been mortgaged and sold, it cannot be contended in a separate suit by the judgment-debtor that the sale was a nullity.<sup>11</sup>

#### 9. Sub-section (2).

**Clause (a).—**A sub-lease as provided by the Act is permitted. See section 39

**Clause (b).—**This clause for the first time since 1873, if not earlier, validates a sale of a holding of any of the classes of tenants mentioned in execution of a decree for arrears of rent, but not in execution of any other decree.

**Clause (c) and proviso.—**A tenant is allowed to transfer or release his interest to a co-tenant.<sup>12</sup>

<sup>1</sup> 10 All. 130—8 A. W. N. 41.

<sup>2</sup> II U. D. 738.

<sup>3</sup> II U. D. 740.

<sup>4</sup> II U. D. 742.

<sup>5</sup> 4 All. 471.

<sup>6</sup> 41 All. 346—17 A. L. J. 302.

<sup>7</sup> 43 All. 547—IV U. D. 723.

<sup>8</sup> II U. D. 758.

<sup>9</sup> 37 All. 278—13 A. L. J. 300.

<sup>10</sup> 16 A. L. J. 557—46 I. C. 897.

<sup>11</sup> *Sukhlal v. Dongar*, XVI U. D. 209.

<sup>12</sup> *Dina v. Khairati*, 15 L. R. Rev. 237—XV U. D. 188; *Gudru v. Bhim Singh*, XVI U. D. 556.

Where some of several co-tenants offer a surrender of their interest to the zamindar without the consent of the others, it is a release in favour of the other co-tenants.<sup>1</sup>

Where by a partition award, an occupancy holding of the joint family is awarded to one member without objection by the others, this amounts to a release by the others.<sup>2</sup>

*A, B and C, owned joint sir in two plots, P and R. They sold separately, but almost simultaneously, their respective shares in the plots to D, and two separate cases of fixation of exproprietary rent were started. They were compromised to the effect that A was to be the exproprietary tenant in one half, and B and C the exproprietary tenants in the other half at a rent of Rs. M, and the holding was to be a joint exproprietary holding. The court passed separate orders in each of the two cases, giving A,  $\frac{P}{1} \frac{R}{1}$  and B and C,  $\frac{P}{2} \frac{R}{2}$ , at Rs.  $\frac{M}{2}$  rent each. There was no division of the holding. The result is that holding consisting of plots P and R should have been recorded as one joint holding; and it must be deemed to be joint. Hence if A relinquishes his share in favour of B and C they become entitled to the entire exproprietary holding at the rent of Rs. M.<sup>3</sup>*

The proviso shows that merely sharing in the cultivation does not make the sharer a co-tenant. He must also have been a co-tenant from the commencement of the tenancy, *e. g.*, the tenancy must have originated in favour of A and B, to make B a co-tenant of A.

Or a person must have become a co-tenant by succession, *e. g.*, where a tenant is on his death succeeded by A and B, both have become co-tenants, or where a tenancy originated in favour of C and D, and D is on his death succeeded by A and B, A, B and C are co-tenants. The expression "has become" shows that the transferee must have become a co-sharer with the transferor in the holding at the date of transfer. A transfer therefore to a prospective heir is bad in law.<sup>4</sup>

*Or has been specifically recognised, etc.*—This settles a number of conflicting decisions of the Board as to whether a person taken as partner by a tenant can be deemed a co-tenant. He will be so deemed only when he has been specifically recognised as such in writing by the landholder. A verbal recognition will not do; nor will receipt of rent operate as estoppel. If a receipt is given to A and B as co-tenants, the original tenant being A, this will amount to such specific recognition. But a receipt to A through B is not so. Where for a consideration a landholder specifically consents (in writing) to the admission of B as a co-tenant or partner with the tenant, B will be a co-tenant.

<sup>1</sup> *Kulwant Rai v. Basheshar Nath*, XIII U. D. 198=14 L. R. Rev. 398.

<sup>2</sup> *Sohan Lal v. Cheda Lal*, 9 L. R. Rev. 13=IX U. D. 11=1927 R. C. 449=12 R. D. 147.

<sup>3</sup> *Ram Kalia v. Faiz Ali*, XIII U. D. 185=14 L. R. Rev. 75.

<sup>4</sup> *Surati v. Lachman*, 1 L. R. (Revenue and Rent Series) 1.

10. **Mukaddami tenure.**—Land held on such tenure is, in the absence of special evidence, not transferable or heritable,<sup>1</sup> although the custom of the part of the country may give some indication, modifying this position. As Hume, Member of the Board observed in *Kanhya Lal v. Bhura Singh*<sup>2</sup> “*prima facie* looking to the customs of that part of the country (Rohilkhand) I should say that men who have in a direct line held these same lands as Mukaddams for 50 years and upwards, must have had prior occupancy right. New men were not chosen for such offices. In old times, the ablest of the long established cultivators were so appointed, and to them new land was not given but the rent was remitted on a part of their long existing holdings.”

11 **Mandadari tenure** is nothing but occupancy tenure and is not transferable<sup>3</sup>

34. When a permanent tenure-holder, a fixed-rate tenant, an occupancy or an ex-proprietary tenant in Oudh or a tenant holding on special terms in Oudh, dies, the interest in his holding shall devolve in accordance with the personal law to which the deceased was subject.

Succession under personal law in certain cases.

This section is in a way new, but is the logical consequence of section 32. Note that in Oudh, the interest of an exproprietary tenant or of an occupancy tenant or of a tenant holding on special terms devolves not according to section 35, but according to the personal law of the deceased tenant. This preserves the old state of things

35. When a male tenant other than a tenant mentioned in section 34 dies, his interest in his holding shall devolve in accordance with the order of succession given below :—

Succession to a male tenant.

(a) male lineal descendants in the male line of descent :

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive ;

(b) widow ;

(c) father ;

(d) mother, being a widow ;

(e) step-mother, being a widow ;

(f) father's father ;

(g) father's mother, being a widow ;

<sup>1</sup> *Bhagwati v. Hanuman*, 23 All. 67.

<sup>2</sup> 1 L. R. (Revenue and Rent Series) 179.

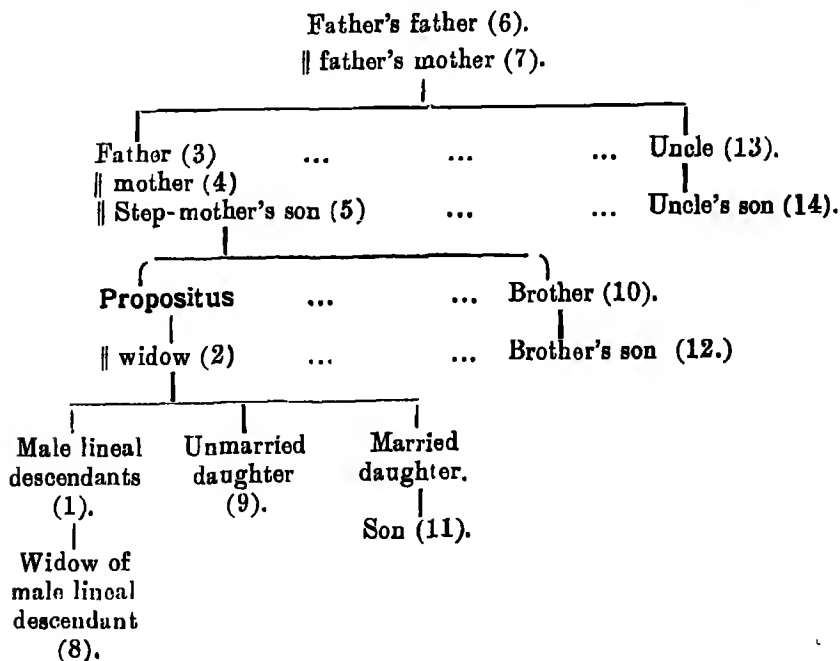
<sup>3</sup> *Kedarnath Kasauddhan v. Naipal Singh*, 8 A. L. J. 1308—12 I. C. 922 ; *Bhagirath v. Rabi Pratab Narain Singh*, 1 U. P. L. R. (B. R.) 10—III U. D. 271—52 I. C. 238—5 R. and Cr. L. J. 174—4 R. D. 96.

- (h) widow of a male lineal descendant in the male line of descent ;
- (i) unmarried daughter ;
- (j) brother, being the son of the same father as the deceased ;
- (k) daughter's son ;
- (l) brother's son, the brother having been a son of the same father as the deceased ;
- (m) father's brother ;
- (n) father's brother's son.

This section is in effect section 24 of the Agra Act, considerably expanded. In Oudh no corresponding section existed, except that in section 48 succession to statutory tenants was given to collaterals who had shared in cultivation with the deceased. The personal law of succession applied to other tenancies. The Proviso to the Agra Act, relating to succession of collaterals and sharing of cultivation by them and daughter's sons have been omitted.

In Class (a) the proviso has been added ; in class (b) "till her death or remarriage" of the Act of 1926, has been omitted. Classes (e), (d), (j) and (k) are the same as classes III, IV, V, and VI respectively. Classes (e), (f), (g), (h), (i), (l), (m) and (n) are entirely new.

1. Section 35 analysed produces the following table of succession, the number in brackets showing the number in the order of succession.



2. The section applies to tenancies, hereditary or in permanency<sup>1</sup> and at unalterable rates,<sup>2</sup> but not to permanent tenancies created before the Act, of 1873, which provided for succession *naslan bad naslan*,<sup>3</sup> and to sub-tenancies.<sup>4</sup>

3. **Tenants.**—Tenant does not include a rent-free grantee,<sup>5</sup> or a zamindar holding *sir*.<sup>6</sup>

4. **When a tenant dies.**—Where a lease in the name of a member of a joint Hindu family is a lease to the family itself, the tenant is the family. Under the repealed Act it was held that on the death of a member of a joint Hindu family, the tenant did not die.<sup>7</sup> A person who claimed a holding on the death of the recorded tenant on the ground that the deceased was a member of a joint Hindu family with him had to prove that the holding was that of the joint family and that the deceased was *karta* of the family.<sup>8</sup> Now the last sentence of section 38 enacts that in such a case, the members of the family are tenants in common for purposes of succession. The result is that on the death of a member his heir according to section 35 will succeed to his interest. This was held to be so under Act 11 of 1901 and is the present view.<sup>9</sup>

<sup>1</sup> *Ruppu Singh v. Chandra Deo Singh*, B. R. 10 of 1930=XI U. D. (S. D.) 23=11 L. R. Rev. 395=15 R. D. 11; *Ram Naresh Singh v. Ram Din Singh*, XI U. D. 212=11 L. R. Rev. 376=15 R. D. 32; *Durga Singh v. Ram Narain Lal*, XII U. D. 321=15 R. D. 792; *Sri Ram Lakshman Janki v. Muhammad Khalil*, 15 L. R. Rev. 134=B. R. 8 of 1933.

<sup>2</sup> *Pheku Lal v. Ravi Nandan Singh*, III U. D. 668=6 R. and Cr. L. J. 30=4 R. D. 432.

<sup>3</sup> *Ravinandan Prasad v. Raghunath Singh*, IV U. D. 450=2 L. R. Rev. 177=7 R. and Cr. L. J. 288=5 R. D. 233.

<sup>4</sup> *Girja Shankar v. Madan Mohan Singh*, 15 L. R. 475=XV U. D. 101.

<sup>5</sup> *Jokhan v. Mahesh*, 13 A. L. J. 150=27 I. C. 720.

<sup>6</sup> *Debi v. Abdul Khalik*, 9 Rev. and Cr. L. J. 230=1923 R. C. 109=V U. D. 446=4 L. R. Rev. 210=7 R. D. 255

<sup>7</sup> *Mendya v. Jhurya*, 42 All. 668=18 A. L. J. 769=IV U. D. 781=57 I. C. 272=6 R. D. 366; *Rajaram Dhari v. Jadunandan*, 11 Rev. and Cr. L. J. 273=1925 R. C. 385=VI U. D. (H. C.) 541=6 L. R. Rev. 196=9 R. D. 106.

<sup>8</sup> *Sheo Murat v. Association for High Education*, XVI U. D. 181=1935 R. D. 156.

<sup>9</sup> *Somaro v. Kesho Prasad Singh*, B. R. 13 of 1912; *Permanand v. Janki*, 2 U. P. L. R. (B. R.) 23=III U. D. 308=6 R. and Cr. L. J. 120=4 L. R. 126; *Dharam Das v. Phula*, B. R. 5 of 1925=11 Rev. and Cr. L. J. 173=VI U. D. 393 and lxxix=1925 R. C. 153=6 L. R. Rev. 144; *Lal Girjesh Bahadur v. Sumitra*, 11 Rev. and Cr. L. J. 204=1925 R. C. 425; *Chaturi v. Jhinnu*, 1926 R. C. 91=VII U. D. (H. C.) 72=7 L. R. Rev. 67=12 R. and Cr. L. J. 30=73 I. C. 98=10 R. D. 97; *Jitawar Singh v. Budhu Singh*, 11 L. R. Rev. 226=14 R. D. 500; *Kharagjit v. Shyam Lal*, 11 L. R. Rev. 227=14 R. D. 503; *Baldeo v. Bhulai*, XI U. D. 163=11 L. R. Rev. 260=14 R. D. 455

If a member dies without any heirs mentioned in the section, the other members take his interest by survivorship.<sup>1</sup>

The section like section 24 of the Act of 1926, is not retrospective and applies only to deaths after the coming into operation of the Act. Where a tenant died before such date and was succeeded by his widow, who dies after such date, the difficulty experienced under the repealed Act as to ascertaining the person entitled to take the holding continues to exist.

Section 22 of the Act of 1901 was not retrospective and only applied to deaths after the 31st of December, 1901. Where a tenant died before that date, the succession followed the personal law, and the various heirs got such shares and estates and of such quantity or quality as such law allowed.<sup>2</sup>

A Mahomedan widow who inherited before 1902 a share in her husband's holding took that share in her absolute right and on her death after 31st December, 1901 her (and not her husband's) heirs became entitled to succeed to that.<sup>3</sup>

So where a Muhammadan tenant died leaving a widow and a daughter, the latter became a tenant although the widow's name was alone entered.<sup>4</sup>

A Hindu widow got only a life-estate.<sup>5</sup> On her death not her heirs but her husband's heirs are entitled to succeed.<sup>6</sup> Suppose she succeeded before but died after 31st December, 1901. How were the heirs to be ascertained—with reference to the law as it stood at the time when she succeeded, i.e., the personal law, or with reference to section 22 of the Act? The same is true of a daughter who succeeded before 1902 and died after.<sup>7</sup>

The last male holder died in 1882, his widow in 1900, and his daughter, who succeeded the widow under Act XII of 1881, in 1933. Succession is not regulated by the Acts of 1901 or 1926 but by the personal law of the last male tenant.<sup>8</sup>

Where on the death of a tenant his holding vested in one or more persons, although according to the rules of personal law the enjoyment was postponed, and the event which conferred the right of present enjoyment occurred after the end of 1901, section 22 did not apply as it could not affect vested rights. A died before 1902 leaving two daughters, one indigent and other well off. According to Hindu Law the state vested

<sup>1</sup> *Kamla Prasad v. Pashpat Partap Singh*, XX U. D. 139=1939 R. D. 41.

<sup>2</sup> *Agodhya v. Rajna*, 58 All. 139=XV U. D. (H. C.) 84=15 L. R. Rev. 367=18 R. D. 256=1934 A. L. R. 945=1934 A. 1 R. All. 875=1935 A. L. J. 934.

<sup>3</sup> *Izhar Ahmad v. Ikram Ali*, IV U. D. 619=5 R. D. 377, *Dost Muhammad v. Jai Lal*, XVII U. D. 30=1936 R. D. 58, see note 8 at p. 255.

<sup>4</sup> *Muh. Waris v. Jusia*, 5 Rev. and Cr. L. J. 45=III U. D. 248=4 R. D. 174.

<sup>5</sup> *Deoki Rai v. Man Rai*, III U. D. 586=4 R. D. 366; *Sukhandan v. Parbhu Narain Singh*, III U. D. 503=4 R. D. 307.

<sup>6</sup> *Mahabir Lal v. Gura Prasad* 1 U. P. L. R. (B R.) 21=52 I. C. 438.

<sup>7</sup> *Chhedra v. Lachman Singh*, IV U. D. 377=6 L. R. Rev. 172=8 R. and Cr. L. J. 188=5 R. D. 86.

<sup>8</sup> *Har Narain Singh v. Nand Ram*, 1939 A. L. J. 199=1939 A. I. R. All. 197=1939 R. D. 61.



in both, but the enjoyment of the affluent sister was postponed during the life of the indigent sister. On the death of the latter after 1901, the other sister and not the indigent sister's son got the holding.<sup>1</sup> Under the Hindu law, all the widows or other female heirs of a person take his estate jointly, with rights of survivorship. *A*, *B* and *C* are the three daughters of a tenant who died before 1902. His holding was usufructually mortgaged, so that neither of the daughters were particularly interested in it. *A* and *B* died out and then the mortgage was redeemed or became extinguished. *C*, the survivor, was entitled to the holding and not the landholder.<sup>2</sup> Suppose the holding vested in two widows who divided it between themselves. On the death of one of them, her share survived to the other widow and did not go to the husband's reversioners. See also *Jagdamba v. Umedi*.<sup>3</sup> There the son and grandson of a tenant succeeded before 1902, and the grandson died after that year; since both succeeded as co-tenants, the widow of the deceased took his share as co-tenant.

A serious conflict of views prevailed where the succession opened out to reversioners of a Hindu after the death of his female heir in 1902 or subsequently.

In *Sumari v. Jageshwar*,<sup>4</sup> a single judge of the High Court held that succession opened out on the death of the widow and when that took place after 1901, the heir of the husband, who according to section 22 would have succeeded him had he died then, would succeed, and therefore a daughter could not inherit. This means that the widow merely continued the tenancy of her husband, and that he must be considered to have continued as the tenant while his widow was in occupation and to have died when she died; in other words, that by fiction of law, his life had been prolonged which, to say the least, is legal fiction with a vengeance. A Bench decision in *Deoki Rai v. Parbati*,<sup>5</sup> struck the first note against the view that seems to have obtained till then. There *A*, a perpetual lessee of a holding, died before 1901 and was succeeded by his daughter who died after the coming into operation of the repealed Act, leaving a son *B*. *B* did not share in the cultivation of the holding with *A*. The Bench, however, held that section 22 did not apply, as succession must be regulated by the law as it stood at the date of *A*'s death. The Court also opined that if section 9 of Act XII of 1881 did not apply, section 22 certainly did not, and the case was one unprovided for and therefore the personal law prevailed. This was also the view in *Nathu v. Gokala*,<sup>6</sup> where a brother's claim was defeated as against the daughter of the last male tenant who died before and whose widow died after the 1st of January, 1902. This was also the

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<sup>1</sup> *Dulari v. Mulchand*, 32 All. 314—7 A. L. J. 293—5 I. C. 384.

<sup>2</sup> *Dukhni v. Rahman*, 111 U. D. 247—5 Rev. and Cr. L. J. 48—4 B. D. 62.

<sup>3</sup> VI U. D. 332—1925 R. C. 26—6 L. R. Rev. 5—9 R. D. 268.

<sup>4</sup> 20 I. C. 7.

<sup>5</sup> 23 I. C. 100.

<sup>6</sup> 37 All. 658.

view in *Bisheshar v. Dukharan*,<sup>1</sup> There, an occupancy tenant, *A*, died leaving two daughters, *B* and *C*, who succeeded him as joint life-tenants under section 9 of Act XII of 1881 and the Hindu Law. *B* died leaving a son, *D*, and *C* took the whole holding by survivorship. *C* died in 1913 leaving a son *E*. *D* claimed half the holding from *E*. He won on the ground that either section 9 of Act XII of 1881 and the personal law regulated the succession, or the case was not provided for by section 22 of the Act of 1901 and the Hindu Law applied. The Bench had in 23 I. C. 100, and 37 All. 658, also proceeded on the supposition that if the female tenants on whose deaths the disputes in those cases arose, could be regarded as the full tenants, then too the party against whom the decisions were given could not have succeeded. In 38 All. 197, (cited above) the Bench definitely held that a Hindu female succeeding under Act XII of 1881 could not be regarded as a full tenant but was only a tenant for life.

In *Bhup Singh v. Jai Ram*,<sup>2</sup> *A* with others was entitled to an occupancy holding. He was in separate possession of three-eighths share of it. He died before 1902 and was succeeded by his widow who died after the Act of 1901 came into force. *B* sued to recover possession of *A*'s share. He was one of the persons along with whom *A* held the entire holding as one tenure, and in that way shared in the cultivation of the holding with him; but did not share in the cultivation of *A*'s share. It was held that this section did not apply and *B* was entitled to succeed as the reversionary heir of *A*. There is a sentence in the judgment to the effect that on the widow's death the succession would be regulated by this section but the decision proceeded upon the ground that the section did not apply as there could under the circumstances be no question as to the succession to the entire holding.

Where a tenant died before 1902, a collateral who did not share in cultivation with him cannot succeed after the widow's death subsequent to 1901.<sup>3</sup> The curious may be referred to cases in the footnote <sup>4</sup>

<sup>1</sup> 38 All. 197=14 A. L. J. 127=32 I. C. 771.

<sup>2</sup> 16 A. L. J. 459=4 Rev. and Cr. L. J. 126=46 I. C. 387.

<sup>3</sup> *Bechu Singh v. Baldeo*, 44 All. 327=20 A. L. J. 165=1924 A. I. R. All. 84=V U. D. (H. C.) 5, 82=3 Rev. and Cr. L. J. 199=1922 R. C. 5, 28=3 L. R. Rev. 93=65 I. C. 507=8 R. D. 523.

<sup>4</sup> *Bansidhar v. Rajwanta*, B. R. 3 of 1907; *Prag Narain v. Bhagwati*, I U. D. 312; *Silla Sahai v. Bhagwanti*, III U. D. 252=4 R. D. 75; *Zubair Ahmad v. Dhonda*, 2 U. P. L. R. 21=6 Rev. and Cr. L. J. 118=IV U. D. 35=1 L. R. Rev. 141=6 R. D. 144; *Muhammad Salim v. Maktula*, 5 L. R. Rev. 232=VI U. D. 186=1924 R. C. 333=8 R. D. 177; *Thakurva v. Gobind Singh* 7 L. R. Rev. 12=12 Rev. and Cr. L. J. 43=1925 R. C. 555; *Deoki Rai v. Manni Rai*, III U. D. 586; *Tika v. Misri Singh*, III U. D. 521=4 R. D. 316; *Hansab v. Jangtoo*, I U. D. 376=1 Rev. and Cr. L. J. 130; *Mashar Abbas v. Jagat Narain*, B. R. 2 of 1918=III U. D. 3=5 Rev. and Cr. L. J. 69; *Suraj Din v. Hanumant Singh*, VI U. D. 298=7 L. R. Rev. 169=1926 R. C. 132=9 R. D. 25; *Mata Bhik v. Ajudhia Baks*, II U. D. 255=3 R. D. 164; *Mahtab Singh v. Ram Sarup*, II U. D. 42=2 Rev. and Cr. L. J. 47=4 R. D. 513; *Ramanand Rai v. Mahomed Abdul Bashkar*, I U. D. 181=1 Rev. and Cr. L. J. 61=29 I. C. 548; *Budhu v. Satdeo*, B. R. 8 of 1919=III U. D. 103=1 U. P. L. R. (B. R.) 30=53 I. C. 85=5 Rev. and Cr. L. J. 208=3 L. R. Rev. 285=5 R. D. 307, *Sital Prasad v. Bishen Dat* I U. D. 87=30 I. C. 804; *Chura Mal v. Jit Singh*, I U. D. 260=32 I. C. 767, *Harbans v. Bishambhar Singh*, I U. D. 388=33 I. C. 330; *Babu Ram v. Tuzimul Hussain*, I U. D. 67; *Harjas v. Makund Swarup*, I U. D. 120=27 I. C. 737, *Contra Jagdamba v. Umedi*, 1925 R. C. 26.

Under Act X of 1859 occupancy rights were neither heritable nor transferable. Hence a Hindu widow who took her husband's holding before 1873 did so in her own right.<sup>1</sup>

Where *A, B, C*, three brothers, and their cousin *D*, jointly held certain land as *sir*, and *D* sold off certain share in respect of which he was recorded as exproprietary tenant, and then *A, B, C*, sold off certain other shares, in respect of which they were recorded as exproprietary tenants, but the evidence showed that they all continued to cultivate their *sir* jointly and that no demarcation between the lands sold by them was made, it was held that on the death of *D*, his share went to *A, B* and *C*.<sup>2</sup>

5. **In his holding.**—Where a tenant made an illegal transfer of his holding, and the transferee remained in possession for more than 12 years with the consent of the landholder, the latter had acquired occupancy rights, the transfer under the circumstances being tantamount to abandonment of the holding. On the death of the transferee, an heir, *e.g.*, the son of the original tenant, cannot succeed under this section on the basis that the transfer was illegal.<sup>3</sup>

6. **Shall devolve, i.e.,** in no other way, *e.g.*, not according to personal law.<sup>4</sup> A will cannot prevail over the order of succession prescribed by sections 35 to 37, that is, persons entitled under these sections will inherit in spite of a will to the contrary.<sup>5</sup> Nor can a lease providing succession according to the personal law.<sup>6</sup> Section 35 shows that a right of occupancy is extinguished if the tenant dies without leaving heirs as provided by the Act.

7. **Male lineal descendants, i.e.,** sons, grandsons, etc. Only those in the male line of descent come in. Therefore, a daughter's son is excluded under this head, although he takes under class (K).

<sup>1</sup> *Manpal Singh v. Raja Partab Singh*, 44 A. 376=29 A. L. J. 181=8 Rev. and Cr. L. J. 105=V U. D. (H. C.) 1.

<sup>2</sup> *Phul Singh v. Drigpal*, 1925 R. C. 527=6 L. R. Rev. 41=VI U. D. 337.

<sup>3</sup> *Harihar Prasad v. Tajuddin*, II U. D. 249=3 R. and Cr. L. J. 154=3 R. D. 169.

<sup>4</sup> *Sri Ram Singh v. Baldeo Prasad*, 1932 A. L. J. 605=13 L. R. Rev. 225=XIII U. D. (H. C.) 96.

<sup>5</sup> *Deo Narain Singh v. Jagat Narain Singh*, 1927 A. I. R. All. 262=VIII U. D. (H. C.) 238=8 L. R. Rev. 261=103 I. C. 237=1927 R. C. 281=11 R. D. 166; *Kallu v Ganga Ram*, 1924 A. I. R. All. 508=VI U. D. (H. C.) 113=5 L. R. Rev. 179=1924 R. C. 345=10 R. and Cr. L. J. 219=34 I. C. 669=9 R. D. 394; *Nageshar Murao v. Bhiku*, X U. D. (H. C.) 71; *Bihdo Das v. Bij Nath*, 15 L. R. Rev. 149=XV U. D. 104.

<sup>6</sup> *Shoo Naih Raj v. Muneshar*, B. R. 2 of 1930=XI U. D. (B. R.) 8=11 L. R. Rev. 276; *Sri Ram Lakshman Janaki v. Muh. Khalil*, B. R. 8 of 1933=15 L. R. Rev. 134.

Only legitimate issue inherit.<sup>1</sup> A son from a woman who had lived with the deceased for 20 years was presumed to be legitimate in the absence of proof that there had been no valid marriage.<sup>2</sup>

But an illegitimate son of a Sudra by his permanent concubine is in the absence of a legitimate son, entitled to succeed.<sup>3</sup> Illegitimate sons can inherit if they succeed to their father in the community to which they belong.<sup>4</sup> A son of a Kshatrya by a Sudra woman is not a Sudra, and hence illegitimate sons of such a son are not entitled to succeed.<sup>5</sup> Offspring of a Karao marriage, where such marriage is allowed, are legitimate.<sup>6</sup> So of a Berya tenant from a woman who lived regularly with him.<sup>7</sup>

An adopted son of a Hindu is in the same position as a legitimate son.<sup>8</sup> Amongst Rana Rajputs, a sister's son may be validly adopted.<sup>9</sup> A son-in-law may by proved custom be adopted by a Khatick.<sup>10</sup> Lodhs are Sudras and it is not settled what requirements exist for adoption or that lameness of the adoptive son is a disqualification.<sup>11</sup> The adoption must be proved to have been made<sup>12</sup> and legally valid.

A posthumous son is a son and heir.<sup>13</sup> A step-son cannot succeed to his step-mother's holding.<sup>14</sup>

<sup>1</sup> *Mula Prasad v Bhuvaur*, 3 R. 2 of 1837, *Jageshar v. Bindeshri*, 8 A. L. J. 761=11 I. C. 936; *Jagat Narain v. Chattrapal Singh*, 1 U. D. 102; *Baldeo Singh v. Khushal Singh*, 11 U. D. 287=3 R. D. 132; *Jwal Singh v. Sardar*, 41 A. 629=17 A. L. J. 734=5 Rev. and Cr. L. J. 173=51 I. C. 216

<sup>2</sup> *Parmeshwari Narain v. Magon*, XVII U. D. 78=1936 R. D. 110.

<sup>3</sup> *Ram Kalli v. Jumna*, 5 A. L. J. 629.

<sup>4</sup> *Baijnath Prasad v. Gur Prasad*, 9 Rev. and Cr. L. J. 160=1923 R. C. 40. V U. D. 373=4 L. R. Rev. 141=5 R. D. 27; *Muh. Zahid Ali v. Muh. Husain*, 1923 R. C. 99=9 Rev. and Cr. L. J. 231=4 L. R. Rev. 241=V U. D. 447=7 R. D. 258.

<sup>5</sup> *Jwala Singh v. Sardar*, 41 All. 629=17 A. L. J. 734.

<sup>6</sup> *Sagar Mal v. Har Sarup*, 7 L. R. Rev. 156=12 Rev. and Cr. L. J. 164=1926 R. C. 202=VII U. D. 126=10 R. D. 479.

<sup>7</sup> *Sukhi v. Sheo Prasad*, 7 L. R. Rev. 348=1926 R. D. 445=VII U. D. 205=10 R. D. 574

<sup>8</sup> *Lala v. Nahar Singh*, 34 All. 658=10 A. L. J. 299=16 I. C. 181; *Nandan v. Raj Kishor*, B. R. 5 of 1904; *Sheopujan Rai v. Mangoo*, 2 U. P. L. R. (B. R.) 12=6 Rev. and Cr. L. J. 106=IV U. D. 32=56 I. C. 652=6 R. D. 142.

<sup>9</sup> *Ganga Dei v. Muh. Habib-ur-Rahman Khan*, XVIII U. D. 264=1937 R. D. 583.

<sup>10</sup> *Kant Lal v. Bans*, 1938 A. L. J. (B. R.) 66.

<sup>11</sup> *Bhagwan v. Jungliat*, XII U. D. 49=15 R. D. 247.

<sup>12</sup> See *Rim Dayal v. Nirmim* B. R. 8 of 1838; *Khalil Ahmad v. Gundhari*, 10 L. R. Rev. 355.

<sup>13</sup> *Nanhe v. Durg Narain Singh*, IV U. D. 268=6 R. D. 470; *Sukhrania v. Balmukund*, V U. D. 305=1922 R. D. 454=7 R. D. 515.

<sup>14</sup> *Pashupat Partab Singh v. Lal Rupendra Narain*, 1923 R. C. 48=V U. D. 512=10 Rev. and Cr. L. J. 63=4 L. R. Rev. 407=7 R. D. 314.

**Qu.** Whether a son can give up his rights in favour of his father's widow.<sup>1</sup>

Where the number of sons is more than one, they all take equally, though by different wives.<sup>2</sup> Where a son succeeded as one of the sons of his father, the occupancy tenant, the fact that only the names of his brothers were recorded will not prove loss of his rights,<sup>3</sup> and on his death his widow succeeds to his half<sup>4</sup> and also to the other half of his brother who died heirless.<sup>5</sup>

The proviso, which is not a happy example of lucid expression, must be kept in mind. It means for example that in the presence of a son of a deceased tenant his grandsons and lower descendants will not succeed, in other words a nearer descendant will exclude a more remote one.

Where a son entitled to succeed is alive his sons will have no present right of succession.<sup>6</sup> But in an earlier case the Board had decided that two sons and a grandson by one of them succeeded together.<sup>7</sup> In a later case the members differed in their views.<sup>8</sup> The High Court had held the view, which has not been adopted, that all male lineal descendants in the male line of descent succeeded together.<sup>9</sup>

A *chela* is under Hindu Law the spiritual son of the *guru*. But the Tenancy Act has nothing to do with such fictitious relationship. Hence, a *chela* will not be allowed to inherit an occupancy tenure of his deceased *guru*.<sup>10</sup> This rule cannot be got over by adoption by a Nihang Goshain, as he cannot make a valid adoption.<sup>11</sup>

In revenue papers, it is not unusual to find institutions like a *math*, the idol of a temple or a mosque, entered as the tenant of a holding. The Board has held in several cases<sup>12</sup> that a temple cannot

<sup>1</sup> See *Mul Kuar v. Mhabbat Bahadur*, III U. D. 630.

<sup>2</sup> *Sukh Ram v. Gokul*, XVI U. D. 25.

<sup>3</sup> *Sukhi v. Bhagwati Prasad*, XVI U. D. 402.

<sup>4</sup> *Chote v. Narayan Das*, II U. D. 15=4 R. D. 484; *Padarath v. Ram Nath*, III U. D. 548; *Nathu Singh v. Nam Singh*, XV U. D. 495.

<sup>5</sup> *Khairuddin v. Jan Bibi*, II U. D. 81.

<sup>6</sup> *Har Prasad v. Rasmit Khan*, XVI U. D. 530=1935 R. D. 424.

<sup>7</sup> *Prag v. Kunji*, IV U. D. 597=3 L. R. Rev. 90=5 R. D. 366.

<sup>8</sup> *Layaq v. Megha*, 1936 R. D. 575.

<sup>9</sup> *Ram Rup v. Sarju*, 1925 A. I. R. All. 786=VI U. D. (H. C.) 453=6 L. R. Rev. 122; *Bhura v. Shihab Uddin*, 30 All. 128=5 A. L. J. 77; *Sri Ram Singh v. Baldeo Prasad*, 1932 A. L. J. 605; *Ali Baksh v. Barkat Ullah*, 34 All. 419=9 A. L. J. 486.

<sup>10</sup> *Bishuideo v. Mahadeo*, B. R. 8 of 1904 (doubted in *Abdul Rahman v. Harihar*, I U. D. 134); *Suraj Kumar v. Mahadeo*, 5 N. W. 50; *Jageshar v. Bindeshri*, 8 A. L. J. 731=11 L. C. 936; *Punjab Singh v. Santram*, P. B. (1896), No 22 (F. B.); *Kesho Prasad v. Ramanand Gir*, 29 L. C. 407=I U. D. 189; *Makiraj Singh v. Rani Kishori*, II U. D. 341=3 R. D. 252. But see *Sabhu Singh v. Khanzada Singh*, 10 Rev. and Cr. L. J. 306=5 L. R. Rev. 256=VI U. D. 213=8 R. D. 203=1924 R. C. 340 where a Sadhu brother was allowed to succeed.

<sup>11</sup> *Mahesh Bharti v. Pernhadi Lal*, XIV U. D. 177=14 L. R. Rev. 438.

<sup>12</sup> *Kesho Prasad v. Rama Nandgir*, I U. D. 189=29 L. C. 407; *Radhika Das v. Madan Gopal*, II U. D. 344. (See also pages 46 and 174 above.)

be a tenant or acquire occupancy rights as the holding contemplated by the Act is by persons who actually cultivate or hold the land. This is the view under the Act.

8. **Widow**—Section 36 governs this clause. A widow's or a daughter's interest is for life and cannot become an independent interest by 12 years' occupation.<sup>1</sup> There is no presumption that a Hindu widow's occupancy holding is for life only. That depends on the origin of the holding.<sup>2</sup>

Where the husband died as a non-occupancy tenant and the widow completed the 12 years for acquisition of occupancy rights, she was not the occupancy tenant, and on her death was succeeded by her husband's heirs.<sup>3</sup> But *secus* if the husband had died in Agra before 1902, *Ram Dayal v. Bindeshwari Prasad*, XIX U. D. 77=1938 R. D. 121. This is no longer good law as section 36 shows.

Where a widow after remarriage continued in possession, she does not start a fresh tenancy for herself so as to acquire occupancy rights in herself after 12 years.<sup>4</sup>

Where a part of a holding is given by the heirs to a widow or female for maintenance, free of rent, it does not become her separate holding.<sup>5</sup>

The succession to other heirs opens out on the widow's death.<sup>6</sup>

Widow means wife of the deceased by a marriage valid according to the personal law of the deceased.<sup>7</sup>

A widow can accelerate the succession of the person next entitled after her ; and if she does so her life estate is extinguished, and on the death of such person she cannot resume the holding on the old status.<sup>8</sup>

<sup>1</sup> *Chheddua v. Lachman Singh*, IV U. D. 677=8 Rev. and Cr. L. J. 188=8 L. R. Rev. 172=5 R. D. 857.

<sup>2</sup> *Sahu Makund Ram v. Habbu*, V U. D. 29=2 L. R. Rev. 23 ; *Ram Lal v. Zalim Singh*, 9 L. R. Rev. 329=IX U. D. 157=12 R. D. 791.

<sup>3</sup> *Nawab Sultan v. Kishan Des*, B. R. 2 of 1923=V U. D. (xxx) ; *Thakur Das v. Rewa Rai*, III U. D. 81=5 R. D. 473 ; *Contra Nisam Ali v. Hazari Lal*, 5 Rev. and Cr. L. J. 188=II U. D. 201=4 R. D. 54.

<sup>4</sup> *Sita Ram v. Har Prasad*, 8 L. R. Rev. 302=VIII U. D. 76=1927 R. C. 352=11 R. D. 636 But see *Bindeshwari Prasad v. Bechu*, XV U. D. 317.

<sup>5</sup> *Bhagirathi v. Shahbaz Khan*, 6 Rev. and Cr. L. J. 9=III U. D. 419=4 R. D. 231 ; *Abdul Sumad Khan v. Shib Lal*, IV U. D. 232=5 R. D. 433 ; *Ram Dayal v. Gopal*, 5 L. R. Rev. 121=10 Rev. and Cr. L. J. 156=1924 R. C. 94=VI U. D. 94=9 R. D. 509.

<sup>6</sup> *Abu Said Khan v. Surajbali Singh*, IV U. D. 154=6 R. D. 256 ; *Rajmangal v. Kaul*, 8 L. R. Rev. 359=VIII U. D. 131=1927 R. C. 418=12 R. D. 322.

<sup>7</sup> *Sunandi v. Harkishen*, 2 L. R. Report (Rev. and Rent Series 3.)

<sup>8</sup> *Dewan Singh v. Kuar*, 2 U. P. L. B. 47=6 Rev. and Cr. L. J. 205=58 I. C. 441=IV U. D. 96=6 R. D. 205.

9. Class (c).—**Father.**—This was a new heir introduced by the Act of 1926.

10. Class (d).—**Mother, being a widow.**—Remarks made as to widows apply.

Classes (e), (f), and (g) opening the succession to widow step-mother, paternal grandfather, and paternal grandmother are now. The new female successors must be widows to be entitled to succeed.

11. Class (h).—**Widow of a male lineal descendant in the male line of descent.** This is a new class of heirs introduced by the Act. The expression widow has the same meaning as in class (b) and has been explained above in the notes to that class. (*Vide* p. 255 above.)

12. Clause (i).—**Daughter.** This is subject to section 36 and is a new class introduced by the Act. A daughter must be unmarried in order to be entitled to succeed. A married daughter has no right to succeed. Can a daughter who was married but is a widow or divorced when the succession opens out, be said to be an unmarried daughter?

13. **Brother**—He comes in on the failure of the previous classes *e.g.*, if grandsons are alive, a brother, though cultivating jointly with the deceased, cannot succeed.<sup>1</sup> He must be the son of the same father as the deceased, *i.e.*, either full or consanguine. A uterine brother, *i.e.*, a son of the same mother only of the deceased, has no right of inheritance. Here too, the personal law should prevail, and a full blood brother should be preferred to a consanguine or half-blood brother. But if the personal law has been abrogated altogether both will share equally. A deceased brother leaves no right of inheritance to his sons. A holding belonged to *H*, *B* and *N*. *N* died leaving a widow *J*. On her death *B* was alive but *H* was dead leaving a son. *B* gets *N*'s share of the holding and no part of it passes to *H*'s son.<sup>2</sup> A brother need not have shared in the cultivation with the deceased, as was necessary under the Act of 1881.

A holding belonged to three brothers, *A*, *B*, *C*, but not to *D* another brother. On *A*'s death without issue and widow his interest will not survive to *B* and *C*, but will pass to *B*, *C* and *D*.<sup>3</sup>

A cousin brother cannot succeed in the presence of a real brother and the fact that the name of the two are entered at settlement is immaterial.<sup>4</sup>

*A* and *B*, two brothers, had separate holdings. *A* died, *B* paid rent for both the holdings and obtained joint receipts for the lump sums paid.

<sup>1</sup> *Charan Singh v. Bhaqwan Das*, 11 L. R. Rev 366—XI U. D. 1851—4 R. D. 638.

<sup>2</sup> *Ram Pat v. Raghu Narain Singh*, XII U. D. 34—15 R. D. 228

<sup>3</sup> *Muk. Karim Khan v. Amir Huss*, II U. D. 211.

<sup>4</sup> *Amarjit Singh v. Babban*, 4 Rev. and Cr. L. J. 207—III U. D. 285—4 R. D. 65.

This does not amount to an admission by the landholder that *B* has succeeded to *A*.<sup>1</sup>

A step (consanguine) brother comes before a daughter's son.<sup>2</sup>

Where one of the separated brothers dies leaving an occupancy holding the other brother takes to the exclusion of a nephew.<sup>3</sup>

14. **Daughter's son.**—A daughter's son under the Act of 1926 succeeded only if he shared in cultivation at the tenant's death. If he did not so share and occupancy rights had not been conferred on him under section 17 of the Act but the proprietor decided to treat him as a tenant, he became a statutory tenant.<sup>4</sup> This was not so under Act XII of 1881 and hence if his maternal grandfather died before 1st January, 1902, the daughter's son might succeed without proving co-sharing.<sup>5</sup> Under the present Act the condition as to co sharing has been removed.

15. **Class (l)—Brother's son**, the brother having been a son of the same father as the deceased.

This and in next two classes displace class VII of section 24 of the Act of 1926 which threw open the succession to collaterals generally who had shared in cultivation with the deceased. The rulings as to collaterals and co-sharing in cultivation are of no use now, as collaterals other than these three are no more heirs and the question as to co-sharing has been omitted.

16. **Class (m)—Father's brother.**—The father and the father's brother must be sons of the same father, though they may be from different mothers. Sons of the same mother but from different fathers are not, it is submitted, heirs.

17. **Class (n)—Uncle's son, i.e., father's brother's son.** The remarks made in the preceding note apply.

18. Another class of cases that may arise is this. A widow in possession of her husband's occupancy tenure as heir relinquishes her interest in favour of the heir presumptive *e.g.*, her husband's brother, or daughter's son. What is his status? Is he an occupancy or a non-occupancy tenant? Such a relinquishment is not a transfer within the meaning of section 33<sup>6</sup> and if thereafter the heir accelerated dies the widow cannot get back the holding.<sup>7</sup>

It is now settled law that an acceleration does vest the estate in the heir.

Allied to this, is the question whether a male occupancy tenant can by surrendering his interest to the then heir presumptive confer occupancy rights on him. The principle is the same in the two cases.

<sup>1</sup> *Bhoda v. Murari Lal*, 2 U. P. L. R. (B. R.) 83=6 Rev. and Cr. L. J. 244=IV U. D. 272=60 I. O. 219=6 R. D. 474.

<sup>2</sup> *Udit Narain v. Ram Harakh*, 1938 A. L. J. (B. R.) 46.

<sup>3</sup> *Umrai Singh v. Ansh Singh*, 14 L. R. Rev. 645=XIV U. D. 212.

<sup>4</sup> *Sita Ram v. Ajodhya Prasad*, XV U. D. 341.

<sup>5</sup> *Captan Singh v. Ved Ram Singh*, XIV U. D. 23=17 R. D. 11.

<sup>6</sup> *Shah Muhammad Zuhoor Alam v. Amjad*, III U. D. 326=4 R. D. 147.

<sup>7</sup> *Dewan Singh v. Phul Kuar*, 2 U. P. L. R. (B. R.) 47=IV U. D. 96=6 R. and Cr. L. J. 205=58 I. O. 441=6 R. D. 205.



**19. Crops.**—Where an occupancy tenant dies in the middle of an agricultural year, the holding and the crops, though not necessarily the occupancy rights, devolve on his heirs (presumably, heirs under the personal law). If the zamindar does not wish to retain such heirs as tenant, he ought to eject them according to law.<sup>1</sup>

**36. (1)** When a female tenant, other than a tenant mentioned in section 34, who, either before or after the commencement of this Act, has inherited an interest in a holding as a widow, as a mother, as a step-mother, as a father's mother, or, as a daughter dies or abandons such holding, or surrenders such holding or a part of such holding, or, in the case of a tenant inheriting as a widow or as a daughter, marries, such holding or such part of such holding shall, notwithstanding anything in section 45, devolve in accordance with the order of succession laid down in section 35, on the heir of the last male tenant, other than a tenant who inherited as a father's father under the provisions of that section.

**(2)** When a tenant, who inherits an interest in a holding as a father's father in accordance with the provisions of sub-section (1) or of section 35, abandons such holding or surrenders such holding or a part of such holding or dies, such holding or such part shall, notwithstanding anything in section 45, devolve upon the nearest surviving heir of the last male tenant, such heir being ascertained in accordance with the provisions of section 35.

1. This section is now in form but in substance re-enacts parts of section 25 (1) of the Act of 1926 and makes clear what was doubtful under sections 24 and 25 of the Act of 1926 and gave rise to various conflicting decisions.

It shows that on the death of females succeeding as heirs to male tenants the succession will not be as if they were the tenants, but will be as when a succession to a male opens out on the death of his female heir.

The section also provides for succession to a male deceased when his female heiress has surrendered or abandoned the interest inherited from him by her, not being a widow or a daughter or father's mother.

**2. Female tenant other than.....a tenant mentioned in section 34.**—This like section 35 is meant to apply to all kinds of tenancies other than those indicated, i.e. to hereditary, exproprietary and occupancy tenancies in Agra and non-occupancy tenancies.

**3. Dies, i.e.** after the coming into operation of the Act.

**4. Who has inherited etc**—Classes (b), (d), (e), (g) and (h) of section 35 have to be read with section 36. A widow's interest terminates on her death, or surrender or abandonment as to the part of the holding

<sup>1</sup> *Sahdeo v. Hira Singh*, II U. D. 247.

abandoned, after the Act, irrespective of the fact that she had inherited it before the Act. This will over-ride the decisions to the contrary.<sup>1</sup> Where a widow died before this Act, the succession was not subject to section 36 but to the law prevalent at the time of her death, which opened out the succession.<sup>2</sup>

On her death or remarriage after the Act, the holding will go to her husband's heir,<sup>3</sup> and will not go to her heirs<sup>4</sup> and will not lapse to the zamindar<sup>5</sup> she cannot get back the holding after her second husband's death.<sup>6</sup>

The expression inheriting as a widow may present a little difficulty. A person's widow, her widowed step-mother, father's mother, the widow of his male lineal descendant all inherit because they are widows. His widow inherits as a widow. The other female heirs do not inherit as widows but as step-mothers etc. provided they are widows.

Marriage or remarriage must be according to law or custom, and must be proved by reliable evidence.<sup>7</sup> Inference of a marriage cannot be drawn from the fact that the woman is a loose woman living in sin or adultery.<sup>8</sup>

In castes and tribes where formal marriage ceremony is not necessary, *e.g.* among *jats*, co-habitation with a brother or cousin of the deceased husband may amount to marriage according to the caste or tribal custom.<sup>9</sup>

Remarriage does not extinguish the tenancy but lets in other heirs.<sup>10</sup> It extinguishes the widow's interest.<sup>11</sup> The zamindar could take only in the absence of other heirs of her husband, and this he could do in

<sup>1</sup> *Gaya Singh v. Bandhu*, XVII U. D. 330=1936 R. D. 446.

<sup>2</sup> *Ram Dayal v. Bindeshwari Prasad*, XIX U. D. 77=1938 R. D. 181.

<sup>3</sup> This was also held in *Ameer Singh v. Bibi*, XIII U. D. 175=14 L. R. Rev. 64 ; *Nanhi v. Puran Singh*, XIV U. D. 8.

<sup>4</sup> *E.g.* to the sons of her second marriage, *Udho v. Jai Ram Dei*, 12 L. R. Rev. 195=15 R. D. 534 ; *Kamil v. Jageshwar Prasad*, XIX U. D. 268=1938 R. D. 940.

<sup>5</sup> *Niamat Ali v. Ahmad Ali*, II U. D. 594=3 R. D. 177.

<sup>6</sup> *Pema v. Baldeo*, 12 L. R. Rev. 185=15 R. D. 512.

<sup>7</sup> *Aikram v. Laddo*, XII U. D. 193=12 L. R. Rev. 329=15 U. D. 604.

<sup>8</sup> *Ib.*, *Phullo v. Janardhan Sarup*, XVI U. D. 677 ; *Ram Dei v. Raghuvansh Narain Singh*, XVII U. D. 91 ; *Murti v. Jee*, XX U. D. 5=1938 R. D. 77.

<sup>9</sup> *Lalli v. Abdul Rahim Khan*, VI U. D. 315=5 L. R. Rev. 348=1924 R. C. 550=9 R. D. 257.

<sup>10</sup> See *Hori v. Muh. Ahmad*, B. R. 4 of 1927=8 L. R. Rev. 308=1927 R. C. 367 ; *Amin v. Bhaawati Prasad*, XVI U. D. 173 ; *Contra*, *Asharfi v. Mohan Lal*, VII U. D. 224=7 L. R. Rev. 34=1926 R. C. 473=10 R. D. 290 ; *Contra*, *Kamil v. Jageshwar*, XIX U. D. 268.

<sup>11</sup> *Pema v. Baldeo*, 12 L. R. Rev. 85=15 R. D. 512 ; *Bhairon Ram v. Sedhani*, X U. D. 163=32 I. C. 801.

preference to her second husband who was not a legal heir of her first husband.<sup>1</sup>

It was open to co-tenants of her husband to let her and her second husband have some portion of the holding for their lives.<sup>2</sup>

According to some Board rulings, the zamindar could accept the remarried widow as his tenant, and if she remained in occupation for more than 12 years thereafter, she became an occupancy tenant in her own right, and section 25 (2) (now section (37) applied on her death.<sup>3</sup> For instance, where after remarriage of a widow (heiress to her husband) he took no steps to eject her and she did not, when the Act of 1926 came into force, claim statutory tenant's right as on a fresh admission as tenant, she was held not to have become a statutory tenant, but the occupancy rights of her husband were held to have continued in her which came to an end on her death, as her husband had no heritable heir then.<sup>4</sup> It is not clear from the report whether she died before or after the completion of 12 years after her remarriage. The reason assigned is unsustainable in law, and so is the decision, because on her remarriage the tenancy lapsed to the zamindar as the husband left no heritable heirs, and when after the coming into operation of the Act of 1926, she continued in occupation as a tenant she must be deemed to have become a statutory tenant. Where a widow succeeding to her husband's occupancy holding remarried while the Act of 1881 was in force, but was allowed to retain possession of the holding and died after the Act of 1926 came into force, it was held that she acquired occupancy rights in her own right and her son by the second marriage was entitled to succeed.<sup>5</sup>

Where the zamindar lambardar in a proceeding in 1913 on the remarriage of a widow who had succeeded to her husband before 1901 compromised with her on the terms that she was to be the occupancy tenant to be succeeded by her son by the second husband, and she continued in possession for more than 12 years and then died, she acquired occupancy rights for herself and on her death her said son is entitled to succeed; but not in respect of holdings with respect to which there was no compromise. As regards these, she must be deemed to have been a life tenant only, and the said son if he takes possession as a trespasser is liable to ejectment and damages.<sup>6</sup> It is not clear from the report whether there was a heritable heir of her husband at the time of remarriage. In any event none laid a claim to the holding, and hence she could become an occupancy tenant in her own right by 12 years' occupation.

A curious but perfectly legal result follows Remarriage lets in her husband's heirs, but not her unchastity or sinful life.<sup>7</sup> She continues

<sup>1</sup> *Ugia v. Murat*, XVI U. D. 587

<sup>2</sup> *Dulari v. Dubar*, XV U. D. 350=15 L. R. Rev. 645.

<sup>3</sup> *Bindschri Prasad v. Bechu*, XV U. D. 377 Contra; *Sita Ram v. Har Prasad*, VIII U. D. 75=8 L. R. Rev. 302.

<sup>4</sup> *Ram Prasad v. Mub. Shafi*, XVIII U. D. 28=1937 R. D. 44.

<sup>5</sup> *Sangram v. Kesho Das*, 1941 R. D. 118 (dissenting from 1933 R. D. 613, 1935 R. D. 334 and 1937 R. D. 44 and following 1935 R. D. 188.)

<sup>6</sup> *Shyam Lal v. Dodey*, XVI U. D. 398=1935 R. D. 334.

<sup>7</sup> See *Ram Dei v. Raghuvansh Narain Singh*, XVIII U. D. 91=1936 R. D. 123 and other cases cited above.

to hold her husband's estate as his heir and not independently in her own right.<sup>1</sup>

In one case it was held that a Jat woman who could and did remarry according to the custom of the caste, did not lose her husband's holding as the Hindu Widows' Remarriage Act saved it.<sup>2</sup> On marriages before 1902, when the restriction as to remarriage was introduced, that Act saved a remarried widow's rights.<sup>3</sup> This was extended to widows who had succeeded before 1902 and remarried after that date.<sup>4</sup>

It will be noticed that the words "till her remarriage" in class II of section 24 of the Act of 1926 and in section 22 of the Act of 1901, have been dropped. Instead we have the declaration that her husband's heirs are let in. It follows that if after remarriage a widow continues in possession without eviction by such heirs or the landholders, she may sue to eject a sub-tenant.<sup>5</sup> When the true heir comes along he will be recorded as the tenant-in-chief, and the widow as sub-tenant.<sup>6</sup>

Only the holding inherited from her husband will pass to his heirs and not holdings which are not proved to be such.<sup>7</sup>

Another result follows from this change. The landholder does not get a right of re-entry on remarriage. Hence, while her husband's heirs exist<sup>8</sup> he cannot sue to eject the widow who continues in possession after the remarriage. If without knowledge of the fact of remarriage, the zamindar received rent from the widow, he cannot be said to have readmitted her to the holding.<sup>9</sup>

Readmission will not make her a tenant of the same class as her husband, but she will be a tenant<sup>10</sup> and any person ousting her will be a trespasser.<sup>11</sup>

A mother, who succeeded as such, does not lose her son's holding on her remarriage, but does so on her death, or abandonment or surrender, and if the surrender is only of a part, she loses her interest in the part surrendered. If she is a widow when the succession opens out, she

<sup>1</sup> *Ib.*, *Jagat Narain v. Chhatrar Pal Singh*, I U. D. 102.

<sup>2</sup> *Sohania v. Jagjit*, I U. D. 209=29 I. C. 399.

<sup>3</sup> *Bhartu v. Rup Singh*, IV U. D. 261=6 R. and Cr. L. J. 239=6 R. D. 458.

<sup>4</sup> *Tahir-un-nissa v. Sumarin*, III U. D. 575; *Mariam v. Kanwul Narain*, B. R. 6 of 1920=IV U. D. (B. R.) VIII=3 L. R. Rev. 311 (Mahomedan); *Rupa v. Afzal Fatima*, V U. D. 275=4 L. R. Rev. 44=1926 R. C. 390=9 R. and Cr. L. J. 121=7 R. D. 472 (Hindu).

<sup>5</sup> *Maharaji v. Jangli*, III U. D. 437=5 R. and Cr. L. J. 209=4 R. D. 67.

<sup>6</sup> *Muhammad Yusuf Khan v. Nanhi*, I U. D. 191.

<sup>7</sup> *Sahu Makund Ram v. Harbh*, V U. D. 29.

<sup>8</sup> *Bala Ram v. Biranja*, XVII U. D. 206=1935 R. D. 440.

<sup>9</sup> *Tetra v. Zuhid Ali*, XIX U. D. 89=1938 R. D. 130; *Raghubar Rai v. Somari*, XV U. D. 606=15 L. R. Rev. 578=14 L. R. Rev. 934.

<sup>10</sup> *Amin v. Bhagwat Prasad*, 1935 R. D. 188=XVI U. D. 173.

<sup>11</sup> *Shen Dehal v. Biranja*, 1933 R. D. 613=XIV U. D. 227=14 L. R. Rev. 473; *Amin v. Bhagwat Prasad*, 1935 R. D. 188=XVI U. D. 173.

becomes entitled to succeed, although she remarried between such event and her actual assertion of right or claim for possession,<sup>1</sup> or had remarried during her son's life and was a widow again at his death,<sup>2</sup> and she will not lose her interest on remarriage after succession to the son.<sup>3</sup>

5. **Daughter.**—A daughter succeeding to her mother must be unmarried at her mother's death—under section 37 (c). Such a daughter heir is not governed by section 36. Other daughters are so governed. On the death of any such daughter, or of her marriage, or on abandonment or surrender of the holding or surrender of part of the holding, the holding or the part surrendered shall devolve on the surviving heir of the last male tenant. The term marriage has been explained above in the notes as to widows.

If she married before she became entitled to succeed, she will be debarred, although she is a widow at the time when the succession opens out. This last point is however not clear.

A daughter was no heir in Agra under the earlier Acts. If she succeeded under the Act of 1881, and died before this Act came into force, the section will not apply, and the law prevailing at the time will apply.

Under the Act of 1926, it was held that a daughter who had inherited while the Act of 1881 was in force was a female tenant mentioned in section 25 (1) of the Act of 1926.<sup>4</sup> On a plain reading of section 25 (1) this was not correct as she had not inherited under section 24 of that Act, firstly because she had inherited before that section was enacted and secondly because section 24 did not include a daughter among possible heirs. Similar remarks apply to *Raghbir Singh v. Teekam Singh*.<sup>5</sup>

The reasoning that section 25 (1) applied to all female tenants with life interest was a very forced interpretation and went beyond what was warranted by the words "inherited an interest under section 24." It might have been true in the case of female heirs mentioned in section 24, e.g., a mother,<sup>6</sup> or a widow<sup>7</sup> although this had been doubted or ruled against in some cases.<sup>8</sup>

<sup>1</sup> *Subhagi v. Prag*, 15 R. D. 409.

<sup>2</sup> *Sri Lal v. Kaushilya*, XII U. D. 183=12 L. R. Rev. 337=15 R. D. 612.

<sup>3</sup> *Chandran v. Pura*, XIV U. D. 832=14 L. R. Rev. 873

<sup>4</sup> *Bhaiya Lal v. Hanuman*, XIV U. D. 375=14 L. R. Rev. 687; *Aditya Naram Singh v. Munni Lal*, B. R. 3 of 1932=XIII U. D. B. R. 17=13 L. R. Rev. 239.

<sup>5</sup> XIV U. D. 308.

<sup>6</sup> *Ajudhia Prasad v. Managar, Court of Wards*, XIII U. D. 135.

<sup>7</sup> *Ram Kumar v. Mangalpuri*, XV U. D. 357=15 L. R. Rev. 589; *Jaswant Singh v. Ganga Sahai*, 1934 A. I. R. All. 842=XV U. D. (H. C.) 249=15 L. R. Rev. 601 (succession of widow under Act II of 1901); *Hoshier Singh v. Piare Lal*, XIV=U. D. 15=14 L. R. Rev. 29; *Dular Panday v. Nanda Budhai*, 1938 I. L. R. All. 563 (F. B.) 1938 A. L. J. 585=1938 A. I. R. All. 396=1938 R. D. 628; *Mahadeo v. Ram Das*, XIX=U. D. 79=1938 R. D. 123.

<sup>8</sup> *Gangu Dei v. Chittar*, XII U. D. 277=15 R. D. 692, *Piaray Lal v. Soney Lal*, 58 All. 412=1935 A. L. J. 1212=1936 A. I. R. All. 222=XVI U. D. 617=1935 R. D. 423.

6. **Other female heirs.**—They are (i) the widow of a male lineal descendant in the male line of descent, (ii) widow step-mother, (iii) widow father's mother.

*Qu.*—Whether she comes under the words “as a widow”? If yes, the remarks made as to widows will apply. If not, on her death the holding will pass to the nearest heir of the last male tenant alive at her death.

7. **Or Surrenders or abandons.**—A surrender or abandonment by a female heiress does not bind reversionary heirs. This adopts the view<sup>1</sup> of a single Judge and overrides decisions to the contrary mentioned in the footnote.<sup>2</sup> Surrender or abandonment opens out the succession.

8. **Notwithstanding section 45**, which provides for extinction of tenancies in certain events.

9. **Other than a tenant.....father's father**—The heirs of a father's father who had inherited a holding on the death of his grandson will not on the death, remarriage, etc., of a female heiress tenant (after his death) succeed to the grandson's holding as such heirs but they may come in as the heirs of the grandson.

10. **Nearest surviving heir of the last male tenant.**—According to section 35, i.e., one must ascertain the heir on the supposition that the last male tenant died at the moment of death of, surrender or abandonment by, the female tenant.

For instance, (see the table given in the note to section 35, at p. 247) father's father's widow will not take as his widow (No. 2) but may do so as the father's mother of the propositus (No. 7), so an uncle or uncle's son of the propositus will succeed as his uncle (No. 13) or uncle's son (No. 14) and not as a son of the father's father (No. 1). Similarly, a brother or a brother's son of the propositus will take as such brother (No. 10) or brother's son (No. 12) and not as a male lineal descendant of the father's father (No. 1). A daughter's son of the propositus will be no heir to the father's father but may take as such daughter's son (No. 11.)

Sub-section (2) therefore shows that the succession of a father's father is merely an incident and not as the founder of a new stock, as in the case of other male heirs, such as brother, brother's son, father's brother, father's brother's son.

37. When a female tenant, other than a tenant mentioned in section 34 or section 36 dies, her interest in the holding shall devolve in accordance with the order of succession given below :—

Succession to other female tenants.

(a) male lineal descendants in the male line of descent :

<sup>1</sup> *Jhabbar v Suraj Prasad*, 9 I C 984.

<sup>2</sup> *Govind v. Dipa*, B. R. 2 of 1919=III U D. 703 ; *Hanuman Prasad v. Ram Khelawan*, V U. C. 199=1922 R. C. 284 ; *Ram Bhikoss v. Mahammad Ali Khan*, VI U. D. 101=5 L. R. Rev. 123=1923 R. C. 124.

Provided that no member of this class shall inherit, if any male descendant between him and the deceased is alive ;

- (b) husband ;
- (c) unmarried daughter ;
- (d) daughter's son ;
- (e) brother ;
- (f) brother's son.

1. This reproduces sub-section (2) of section 25 of the Act of 1926 with some variations.

2. **Female tenant other than**—These words show that the section does not apply to females who are tenants in their own rights and not as female heiresses to tenants and to such tenants as are fixed-rate tenants, etc.

The words "other than a tenant mentioned in section 36" exclude from the operation of the section widows, mothers and daughters inheriting under section 35. In the case the widow of a male lineal descendant or other female not within section 36, on her death the holding will pass not to the heirs of the last male holder but to her heirs as determined by this section.

3. **Dies, i.e.,** after the coming into operation of the Act If death took place before, the law prevailing at the time of her death will be the law of succession, e.g., section 25 (2) of the Act of 1926, section 22 of the Act of 1901, etc.

It will be noticed that the section does not come into operation on surrender or abandonment, as section 36 does. Nor will section 88 help, as it applies only to cases under section 36 which is expressly excluded from this section. Hence surrender or abandonment by a female heir for whom section 37 provides will end the tenancy for good and the land-holder or landlord will get a right of entry.

4. **Her interest shall devolve, etc.**—The proviso part of clause (c) of section 25 (2) of the Act of 1926 has been omitted so that co-sharing in cultivation by a daughter's son is no longer needed for his right to succeed. Clauses (c), (e), and (f) are new.

Where members of a Hindu family gave a part of a joint tenancy land to the widow of a deceased member for her maintenance, she became an occupancy tenant by 12 years' possession.<sup>1</sup>

Where a Hindu widow becomes an exproprietary tenant on sale of her husband's estate, the person to succeed would be her husband's heirs.<sup>2</sup>

<sup>1</sup> *Kawal Singh v Jawahar Singh*, III J. D. 40=5 R. D. 441, but see *Bhagvathi v Shahbaz Khan*, III U. D. 419=4 R. D. 231 ; *Abdul Samad Khan v Shih Lal*, IV U. D. 232=6 R. D. 433 ; *Ram Dyal v. Gopal*, VI U. D. 94=5 L. R. Rev. 121

<sup>2</sup> But see *Syed Muhammad v. Zuhud Ali*, XV U. D. 95=15 L. R. Rev. 277.

If there is no such heir, the vendee may take possession and settle the land on a third person.<sup>1</sup>

As to a widow completing 12 years of occupation begun by her husband, see note 8 to section 35 *ante* at page 255.

A grandmother taking possession of her deceased grandson's holding with the consent of the land-holders was a tenant in her own right.<sup>2</sup> This is no longer true.

5. **Male lineal descendants, etc.**—however low, *i. e.*, sons, son's sons, and so on. This was held to be the law under the Act of 1901.<sup>3</sup> Daughter's sons come under cl. (d).

*Proviso* is the same as the proviso to class (a) in section 35, and has the same meaning. The nearer will exclude the more remote.

6. **Husband.**—He occupied the same position as heir under section 25 (2) (b) of the Act of 1926. He was no heir under the Act of 1901.<sup>4</sup>

7. **Unmarried daughter.**—*Qu.* Whether a daughter who is a widow at the date of the tenant's death and has no son comes under the word "unmarried."

8. **Daughter's son.**—He was an heir mentioned in section 25 (2) (c) of the Act of 1926. Now he need not have shared in cultivation.

9. **Brother.**—is a new heir introduced by the Act.<sup>5</sup>

10. **Brother's son**—is also a new heir.

**38.** No person shall be deemed to have an interest in a tenancy to which the provisions of section 35, section 36 or section 37 apply merely by reason of being joint in estate with any person with whom a contract of tenancy has been made or who has succeeded to the interest of a tenant or who has become a tenant by operation of law or otherwise; and except in the case of a co-widow or of a co-tenant who dies leaving no heir entitled to succeed under the provisions of this Act no interest in such tenancy shall pass by survivorship. Where the persons possessing such interest are joint in estate they shall be deemed for the purposes of succession to be tenants in common.

Passing of interest by survivorship.

<sup>1</sup> *Kundan Singh v. Rusal Singh*, XIV U. D. 90—14 L. R. Rev. 278.

<sup>2</sup> *Likhi v. Baldeo*, 14 L. R. Rev. 543—XIV U. D. 278

<sup>3</sup> *Ishar Ahmad v. Ekram Ali*, IV U. D. 619—5 R. D. 377.

<sup>4</sup> *Ram Baran Singh v. Kesho Das*, B. R. 11 of 1910; *Mata Bhik v. Ajudhia Baksh*, II U. D. 255—3 R. D. 164.

<sup>5</sup> See *Sardar Singh v. Gyan Singh*, XV U. D. 34—15 L. R. Rev. 5, for a case before this Act.



This reproduces, with slight necessary verbal alterations, section 26 of the Act of 1926.

**1. To which sections 35, 36, or 37 apply—**This excludes permanent tenure-holders, fixed-rate tenants, occupancy and exproprietary tenants and tenants holding on special terms in Oudh; and includes all other classes of tenants in Agra, female tenants (widows, mothers and daughters) as heiresses to male tenants, and female tenants in their own right. The rule against survivorship and joint estates, *e. g.*, in the case of a holding owned by members of joint Hindu families, enunciated in the section does not apply to the classes of tenants mentioned above, in other words, the members of such families will be joint in estate, as in the case of other family properties, in respect of the holdings, and will have the rule of survivorship applicable to them. This has altered the law as administered before by the Board of Revenue, which as a rule refused to recognise joint tenancies in any case.

A fixed-rate holding (or for the matter of that, any of the other excepted holdings mentioned above) belonging to *A*, a Hindu, which has made one or two descents is the joint family property, of *A*'s descendants and is subject to the rule of survivorship. It does not belong to any of the individual members of the family.<sup>1</sup>

**2. Merely by reason of.**—The word *merely* shows that circumstances other than jointness in estate may indicate that, for instance, the person with whom a contract of tenancy was made or who succeeded to the interest of a tenant was not to be the sole tenant, but was to share the tenancy with one who is joint in estate with him. See note 4 *infra*.

**3. Being joint in estate, etc.**—The word estate here refers to some property other than the holding in dispute. It may be a house, a field, money, business, etc. But unless there is an estate in which two persons admittedly or indisputably are joint, the section has no application. The fact that *A* and *B* are two brothers, members of a joint Hindu family, does not make them joint in estate, unless they have some property in common.

If there is no joint estate, and it is said that a lease of a holding in the name of *A* was for the benefit of *B* also, *B* will have to prove in any case, whether or not this section applies, that he had been admitted to the holding by the landholder. If there had been a joint estate he could have shown that the holding was acquired out of the joint estate, but the necessity to prove the consent of the landholder to his tenancy would still remain. For most purposes, it is difficult to see how the words of the head note affect the matter.

**4. Any person with...tenancy has been made.**—The main difficulty in interpreting the first part of the section arises in connection with the words "any person with whom a contract of tenancy has been made". If this means, that a patta executed in favour of, or a kabuliati given by, *A*, must in all cases conclusively prove that *A* is the only

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<sup>1</sup> *Deoki Nandan v. Ram Chandra*, 1937 A. L. J. 905=1938 A. I. R. All. 17=1938 I. L. R. All. 40=XVIII U. D. (H. C.) 225=1937 R. D. 511.

tenant, then the rulings to the contrary under the earlier Acts go by the board. Those rulings are noted below. But if these words are taken to raise no more than a presumption that *A* is the tenant, as note 2 shows, it will be possible to prove by evidence and from circumstances, as was done under the earlier Act, that the tenancy was created in favour of *A* and those who were joint in estate with him. If this is not established, or if the meaning first mentioned is the true meaning, *A* will be the tenant, and those joint in estate with him will not be deemed to have any interest in the holding.

An ancestral holding, like any other ancestral property of a Hindu is presumed to be a joint holding of the members of the family, although for the sake of convenience members have been in possession separately of portions of it.<sup>1</sup>

The presumption of jointness is not strong at all in the case of collaterals. Proof of a property having belonged to a common male ancestor is required in such cases. For instance, a claimant of a share in the holding of a paternal cousin has to prove that the holding belonged to his grandfather, and not mere jointness in living or business.<sup>2</sup>

Where a holding is recorded in the name of *A*, the grandfather of *B* and *C*, and another holding is recorded in the name of *B* alone, the ordinary presumption is that the first holding belongs to *B* and *C*, and the second to *B* alone,<sup>3</sup> and that neither holds for all in a representative capacity.<sup>4</sup>

Where the holding belonged at one time to all or to two or more members and now stands in the name of a single member or of a descendant of a single member, the presumption is that, if the family is still joint or not separated, the cultivation continues joint as before, and the family or the original tenants or their descendants continue to be tenants. *A* and *B*, two Hindu brothers forming a joint family, are tenants of a holding. There is an ineffectual proceeding in ejectment, and since then, *C*, the son of *B*, is recorded as tenant. *A*, *B* and *C* are all tenants.<sup>5</sup> The test that ought to be applied is whether the person in whose name the holding was recorded had an individual capacity or was within the knowledge of the zamindar a member of a family forming a joint cultivating partnership. In the latter case all members of the joint cultivating partnership would form the tenant.<sup>6</sup>

If *A*, after some years of joint cultivation by two brothers *A* and *B*, takes a lease in his own name, *B*, if he still continues cultivation as before, will be deemed to be cultivating under the lease unless it is

<sup>1</sup> *Lakhan v. Duber*, XVI U. D. 547; *Ram Nath v. Bhura Dutt*, XVI U. D. 590.

<sup>2</sup> *Barhari v. Bunni Lal*, XVIII U. D. 91—1938 R. D. 100.

<sup>3</sup> *Manmohan Nath v. Ram Dhani Nath*, XII U. D. 358

<sup>4</sup> *Kamta Prasad v. Beni Madho Prasad Singh*, XIV U. D. 330—14 L. R. Rev. 634.

<sup>5</sup> *Bachan Singh v. Sukhnandan Singh*, IV U. D. 605—2 L. R. Rev. 112—5 R. D.

shown that the lease to *A* was in his individual capacity or that *A* acted against *B*'s interest.<sup>1</sup>

An occupancy tenant *A* was ejected in 1283 F., i. e., in 1875—76. In 1284, his brother *B* was recorded as tenant, and after he had been recorded for four years, the names of *C* and *D* and later on of *E*, sons of *A*, again appeared as tenants. The representatives of *D* now sued *C* and the descendants of *E* for a declaration that they had a share in the tenancy. The Commissioner as the Court of first appeal found that a lease was given by the zamindars to *C* and *D* not in their individual capacity but as representatives of the joint family and that plaintiffs had been in possession of the land. The Board held that since *B* was a brother of and joint with *A*, the cultivation by him alone for four years did not constitute any break in the tenancy of the family, and hence the plaintiffs were entitled to succeed.<sup>2</sup>

Circumstances may rebut the presumption.

Where all the members of a joint Hindu family, to which an occupancy holding belonged, abandoned it, and the landlord took the land in his possession and kept it for years and let it to other persons, and on the return of a member of one of the branches of the family, let him some of the land for a *nazrana* and rent, with the status of an occupancy tenant, the old family holding is not revived ; and the new lessee is the sole tenant.<sup>3</sup>

Where one of two cousins, in whose names a holding stood, lived separately and had other separate holdings, and executed a registered *kabuliat* for 7 years in respect of the common holding, the inference was that the lease was taken by the lessee for himself alone.<sup>4</sup>

Where a lease was given at an enhanced rent to *A*, after the ejection of his brother *B*, and it was not proved that *A* was joint in the tenancy with *B* at the time of the ejection, the lease was held to have been given to *A* in his individual capacity.<sup>5</sup>

Where leases of a holding were executed sometimes in the name of one member of a joint family and sometimes in the names of other such members, and all the members cultivated it, the case is obviously one in which the family is the tenant and all the members have an interest in it,<sup>6</sup> even though the change in the lessee's name took place after the formal ejection of the prior lessee,<sup>7</sup> a very common proceeding to produce a break in the continuity of a tenancy ; where the successive

<sup>1</sup> *Hari v. Bijai Bahadur*, V U. D. 24=3 L. R. Rev. 15=8 R. and Cr. L. J. 66=7 R. D. 41.

<sup>2</sup> *Mullu v. Tika Ram*, 13 L. R. Rev. 169.

<sup>3</sup> *Dukhi v. Sital*, 12 L. R. Rev. 295=XII U. D. 302=15 R. D. 730.

<sup>4</sup> *Ram Das v. Sundar Singh*, V U. D. 40=3 R. and Cr. L. J. 63=3 L. R. Rev. 36=7 R. D. 57.

<sup>5</sup> *Widya Ram v. Sobha Ram*, IV U. D. 52=6 R. and Cr. L. J. 159.

<sup>6</sup> *Upman Singh v. Bhagwanta*, V U. D. 103=1922 R. C. 203=7 R. D. 508.

<sup>7</sup> *Mahda v. Munna Lal*, B. R. 15 of 1920=3 L. R. Rev. 332.

lessees were father and son, the presumption against a break in the other's tenancy was strong.<sup>1</sup>

An arbitration award provided that each of five brothers *A, B, C, D* and *E*, should have a fifth-share in a holding and that *E* should have nothing to do with the four-fifths share of the other four who remained united. On the death, heirless, of *B* and *C* (or of his widow), *A* can claim his share in the two-fifths of *B* and *C*.<sup>2</sup> This needs reconsideration as *B* and *C* were co-tenants with *A* and *D*.

Where a grove belonged to four branches of a family and three of them leave the village, the fourth is entitled to retain possession of the grove.<sup>3</sup>

A land was recorded as the occupancy holding of one branch of a Hindu family. *A*, a member of another branch of the family, had been in possession of two plots in the holding for a long time. *A* sued for a declaration that he was the occupancy tenant of the plots or an occupancy tenant of the holding with members of the other branch, on the averment that the holding had belonged to the whole family and that he and his father had been in possession of the two plots from the time the family separated. It was not shown that the holding had been acquired by the other branch. The Board ruled that *A* was entitled to a declaration of co-tenancy.<sup>4</sup>

A holding belonged to *A*, his brother *B*, and his nephew *C*, all members of a joint Hindu family. *B* died while Act XII of 1881 was in force, and therefore the holding passed by survivorship to *A* and *C* and not to *A* alone.<sup>5</sup> Obviously, section 26 of the Act of 1926 was not intended to be retrospective and affect rights acquired under any earlier enactments.

A finding of fact that a lease given to one of two persons to whom a holding has descended from an ancestor was given in his or her individual capacity and not on behalf of both, shows that the rights of the other had come to an end.<sup>6</sup>

Under section 11 of Act II of 1901, which did not permit occupation under a seven years' registered lease to count towards the period of 12 years prescribed for acquiring occupancy rights, the question often arose whether a registered seven years' lease in the name of *A*, one of two or more brothers or members, *B, C, D*, etc., of a joint Hindu family, who had prior to the lease jointly cultivated the holding was binding on the other or others also, so as to prevent them from counting the

<sup>1</sup> *Ib. Sandhu v. Umrao Singh*, III U. D. 96 ; *Pershad v. Parshotam*, I U. D. 32—28 (I. C.) 907.

<sup>2</sup> *Sheo Ghulam v. Ram Ghulam*, XII U. D. 283=15 R. D. 699.

<sup>3</sup> *Zalim Singh v. Sheo Mangal Singh*, 12 L. R. Rev. 293=XII U. D. 333=15 R. D. 572.

<sup>4</sup> *Ram Samujh v. Rukh Raj*, 14 L. R. Rev. 54.

<sup>5</sup> *Nand Kishore v. Lal Bahadur*, XII U. D. 185=12 L. R. Rev. 249.

<sup>6</sup> *Umrao Singh v. Daya*, III U. D. 379=4 R. D. 197.

period of the lease towards the 12 years. Various tests or considerations guided the decisions of the cases, *e. g.*, whether *B*, *C*, etc., knew or authorised the taking of the lease by *A* and if the answer was in the negative *B*, *C*, etc., continued to be regarded as tenants irrespective of the lease,<sup>1</sup> or whether *A* was the manager of the family and the lease to him was understood to be in that character,<sup>2</sup> or whether *A* acted within his authority as manager to execute kabuliati or whether *B*, *C*, etc., acquiesced in it,<sup>3</sup> or whether the circumstances are such that *B*, *C*, etc., must be deemed to have consented to the transaction.<sup>4</sup> There are a number of rulings more or less on the same lines but citing them is useless for the purposes of the present Act. The few noted above are merely to indicate that under the old Act the fact of a lease or tenancy being in the name of *A* alone did not prevent others from claiming a share in it.

On principle and apart from authorities, there is no reason why the members of a joint Hindu family, or any other group of persons should not take a lease, and constitute one of themselves as their agent to take the lease or pass the kabuliati, provided the landholder consciously agrees to the arrangement. If he does expressly or impliedly by conduct show that he accepted the family or the group as his tenants although the lease is passed to one only, the whole family or group is the tenant, and provided there is no fraud, collusion or *mala fides*, in proceedings in court taken by or against the ostensible lessee, *e. g.*, of ejectment, the result of such proceedings are binding on the entire family or group.<sup>5</sup>

But if the landholder does not consent to constitute the family or group as his tenant, the ostensible lessee is the only tenant, in spite of any internal arrangement between the members of the family or the group; for no one can become a tenant except with the consent, express or implied, of the landholder. The members of the family or group may have the rights and liabilities as against the lessee, enforceable in a civil court; but they cannot interfere with the relation of landholder and tenant brought about by the lease between the lessor and the lessee. Hence, in all such cases the issues are whether the entire family or group agreed to become tenants, and whether the landholder accepted it or only the ostensible lessee as his sole tenant.

That a holding may belong to a family was also recognised in *Raghu Nath v. Budhu Ram*<sup>6</sup> and in *Rajah Ali v. Ghulam Muhammad*.<sup>7</sup> There,

<sup>1</sup> *Nagina v. Gomti*, II U. D. 451.

<sup>2</sup> *Ghulam Ali v. Skinner*, II U. D. 425; *Marey v. Umrao Singh*, I U. D. 328—27 I. C. 108.

<sup>3</sup> *Multan Singh v. Asa Ram*, IV U. D. 626—5 B. D. 379—2 U. P. L. R. (B. R.) 155; *Achuta Nand v. Khelawan*, V U. D. 108—1922 R. C. 4—3 L. R. Rev. 231—7 R. D. 510.

<sup>4</sup> *Udey Ram v. Parbati*, V U. D. 253, 316—1922 R. C. 478—9 R. and Cr. L. J. 9—7 R. D. 444—3 L. R. Rev. 521.

<sup>5</sup> *Murari Lal v. Behari*, VII U. D. 223—7 L. R. Rev. 373—1926 R. C. 461—10 R. D. 292.

<sup>6</sup> 1930 A. I. R. All. 315—127 I. C. 516—14 R. D. 350.

<sup>7</sup> 12 L. R. Rev. 181—14 R. D. 660.

a holding belonged to the family of *X* and a part of it was occupied by a relation by marriage who claimed the holding for himself. It was held that until the extinction of the rights of the family of *X* in the holding was proved, the relation could not be the tenant. Properties acquired when the family was joint and with the help of the ancestral joint family property should be regarded as joint family property where any such property is tenancy land or a holding. The burden of proving that it was self-acquired property of a single member is on the latter.<sup>1</sup>

The Board's view is that a tenancy is not ordinarily joint family property under the Act, and it is a question of fact in each case whether the lessee took the land in his individual or representative capacity.<sup>2</sup>

Where a lease is given for the first time to a member of a joint Hindu family, the question is whether he took it in his individual capacity or on behalf of the family.<sup>3</sup> In the former case he alone is the tenant;<sup>4</sup> and on his death his heirs under the Act, and not the family, take the holding;<sup>5</sup> whereas in the latter case the family is the tenant;<sup>6</sup> and on the death of the ostensible lessee, the family continues to be the tenant, and his personal heirs are excluded, *e.g.*, his widow.<sup>7</sup> The family has to show that the landholder let this holding to the family;<sup>8</sup> and not that the lessee treated it as part of joint family property by throwing the profits in the common family chest.<sup>9</sup>

Where a holding is purchased and recorded in the name of a member of the family, who could not possibly be its head, the fact that the price was paid out of the joint funds is to be proved by one who alleges the holding to be of the joint family.<sup>10</sup>

<sup>1</sup> *Acharji v. Harai*, 1930 A. L. J. 974=1930 A. I. R. All. 822=52 All. 961=XII U. D. (H. C.) 154=12 L. R. Rev. 177=15 R. D. 67, not followed in *Ram Oudh Das v. Kauleshar*, XVII U. D. 322=1936 R. D. 444.

<sup>2</sup> *Charan Singh v. Bhagwan Das*, XI U. D. 185=11 L. R. Rev. 366=14 R. D. 638; *Dharam Das v. Jhula*, B. R. 5 of 1925=VI U. D. 363=5 L. R. Rev. 144=1925 R. C. 153=11 R. and Cr. L. J. 173.

<sup>3</sup> *Vishnath Singh v. Budhuwa*, 7 L. R. Rev. 367=1926 R. C. 464=9 R. D. 211.

<sup>4</sup> *Qudratullah v. Prem*, B. R. 5 of 1918=III U. D. 9=5 R. and Cr. L. J. 50; *Mata Badal v. Bhagwan Din*, 16 L. R. Rev. 111.

<sup>5</sup> *Qudratullah v. Prem*, B. R. 5 of 1918; *Sheo Mangal Singh v. Muh. Masum*, II U. D. 557.

<sup>6</sup> *Mutan Singh v. Phul Kuar*, B. R. 4 of 1918=III U. D. 7=5 R. and Cr. L. J. 71.

<sup>7</sup> *Mahabir v. Bhagwanti*, 38 All. 325=14 A. L. J. 278=2 R. and Cr. L. J. 79=33 I. C. 110; *Mendya v. Jhuria*, 4 All. 668.

<sup>8</sup> *Dalu v. Kanwal Debi*, 7 L. R. Rev. 377=1926 R. C. 463=VII U. D. 227=10 R. D. 284.

<sup>9</sup> *Padarath v. Jagdeo*, 1927 A. I. R. All. 844=8 L. R. Rev. 303=VIII U. D. (H. C.) 271=1927 R. C. 331=106 I. C. 910, see also *Syed Muhammad v. Bujharath*, VIII U. D. 99=8 L. R. Rev. 333=1927 R. C. 383=11 R. D. 524; *Kallu v. Sital*, 40 All. 314=16 A. L. J. 225=4 R. and Cr. L. J. 77=44 I. C. 717.

<sup>10</sup> *Brj Mohan Singh v. Bhagwati Prasad*, XVIII U. D. 73=1937 R. D. 79.

Where a lease is given to one member of a joint family by name and he alone executes the *kabuliat* the court may refer, in the absence of evidence to the effect that the lease was meant for the whole family, that the sole lessee was the member appearing as lessee, notwithstanding the fact that he and the other members of the family were living together<sup>1</sup> On his death, the other members may take the holding as his heirs, if they are in fact so, and not as if they were original lessees. And if the landholder has accepted the other members as heirs and they have acquiesced in that view, they cannot subsequently resile from that position and claim as original tenants.<sup>2</sup>

Where the tenant was a joint Hindu family, and a member acquired the proprietary rights in the whole Mahal or in the part in which the holding is situate, the holding was decided to have merged in the higher right. So that if the family parted with the proprietary rights subsequently, the family began to cultivate the holding afresh as tenant.<sup>3</sup>

The fact that one of the members of the family which had the proprietary rights actually cultivated the land in the holding did not make him the tenant during the period of his cultivation.<sup>4</sup>

There is no presumption of jointness in the case of a Mahomedan family. Hence acquisition of tenancy rights by one member will not be presumed to be on behalf of all the members of such a family<sup>5</sup>

5. Or who has succeeded to the interest of a tenant, *e.g.*, by inheritance. Suppose a holding belonged to *M*, who left two sons *A* and *B*, who being joint (or for some reason), *A*'s name alone is recorded, and on his death, his son *C*'s name is recorded. If note 2 is correct, *B* or his heir may show that the holding belonged to *M* and came to *A* and *B*, and he is entitled to an interest in it. And unless it is proved by *C* that *B*'s interest was for some cause or other extinguished, the sections would not debar the Court from giving effect to the contention. This was the view under the Acts<sup>6</sup> before 1926.

If all the living descendants of *M* cultivate the holding the initial presumption is strengthened.<sup>7</sup>

6. Or who has.....otherwise.—These words refer to "any person" and not to "no person."

<sup>1</sup> *Mata Badal v. Bhagwati Din*, 16 L. R. Rev. 111.

<sup>2</sup> *Ib.*

<sup>3</sup> *Mitan Singh v. Phul Kuar*, B. R. 4 of 1918—III U. D. 7.

<sup>4</sup> *Mutsaddi Lal v. Durga Shankar*, 2 L. R. Rev. 3—7 R. and Cr. L. J. 116—62 I. C. 103—2 U. P. L. R. 117, see also *Gobind Prasad v. Nimmi*, VI U. D. 292—5 L. R. Rev. (Oudh.) 181—1924 R. C. 500—9 R. D. 247.

<sup>5</sup> *Muh. Munir Alam v. Ninuth*, 5 L. R. Rev. 101—10 R. and Cr. L. J. 139—1924 R. C. 34—VI U. D. 58—9 R. D. 493.

<sup>6</sup> *Sujan Singh v. Ishri*, V U. D. 239—1922 R. C. 351—3 L. R. Rev. 400—7 R. D. 432; *Mahabir v. Pusa*, VI U. D. 202—5 L. R. Rev. 266—10 R. and Cr. L. J. 308—1924 R. C. 346—8 R. D. 190.

<sup>7</sup> *Ib.*

If inheritance is included in succession, the words "who has become a tenant by operation of law" seem to refer to exproprietary tenants.

7. **Or otherwise.**—Perhaps, a person who has become a tenant by adverse possession, or because no suit for 12 years was brought under section 180 is intended to be brought in within the section by virtue of these words.

8. **And except in the case of co-widows, etc.**—These words show, (1) that the interest of one of two or more widows survives on her death to her co-widow or co-widows; and (2) that the interest of one of several co-tenants, who has died heirless according to section 35 survives to his co-tenants.

Under the earlier Act, the surviving co-tenant was held to be entitled to the whole holding on the death heirless of the other tenant or tenants. *A* and *B* were tenants. *A* died leaving a widow, and then *B* died heirless. Since on the death of *A*, his widow and *B* became co-tenants, the widow took the whole holding.<sup>1</sup>

Where the joint tenants of a holding by common consent divide it, the landholder's consent not being obtained, separate holdings do not arise, the joint holding continues in law with the incident of survivorship,<sup>2</sup> subject only to such devolution by inheritance as is possessed under section 22 of Act II of 1901 or section 24 of the Act of 1926 or this section.

Two sisters *A* and *B* were taken to be full exproprietary tenants in their own right in respect of some land which had been their father's *sir*, and which they sold. *A* died leaving a son *C* who in his lifetime made a gift of his interest to his son *D*, whose name was accordingly entered. *B* died heirless and the name of her husband *E*, who at that time could not be her heir in law, was entered. On *E*'s death, *F* his brother claimed to be co-tenant with *D*. The Board held against it, for on the death heirless of *B*, the tenancy survived to the co-tenant *D*.<sup>3</sup>

A person who claims a right by survivorship must prove that he was a joint tenant with the tenant in possession. A suit for arrears of rent against both does not prove the admission of the claimant to the tenancy.<sup>4</sup>

If a tenant has with the active consent of the zemindar enjoyed and suffered the advantages and disadvantages of a joint tenant with another, the landlord is estopped from denying his status, though he cannot prove the origin of his co-tenancy.<sup>5</sup>

9. **No interest, etc., shall pass by survivorship**—Except as indicated in the previous note, joint tenants are merely tenants in common, and on the death of one of them, his or her interest will not survive

<sup>1</sup> *Ram Charan v Daryai*, III U D 312=1 R D. 133; *Indrajit Pratab Bahadur Sahai v. Badri*, XII U D 178=12 L. R. Rev. 291=15 R. D. 618.

<sup>2</sup> *Rasulan v. Babu*, 52 All 548=1930 A L J 811=1930 A I R. All. 350=XI U. D. (H. C.) 147=11 L R Rev 90=14 R D. 249=122 I C. 404.

<sup>3</sup> *Harhar Prasad v. Mata Prasad*, I U D 305=31 I C 869.

<sup>4</sup> *Zahur Ali v. Shao Sampat*, XI U D 150=11 L R Rev. 176=14 R. D. 412.

<sup>5</sup> *Hashmat Ali v Wali Muhammad*, XI U. D. 202=15 R. D. 39.



to the others but will pass to his or her heirs according to section 35 or section 37.

If there are two brothers in a holding, and one of these dies leaving a widow who remarries, the surviving brother becomes the sole tenant.<sup>1</sup>

On relinquishment by one of two co-tenants, his interest passes to the other and not to the landlord.<sup>2</sup>

**10. Tenants in common**—The section makes joint tenants tenants in common and prevents survivorship. This was also the view of the Board of Revenue under the Acts prior to 1926.<sup>3</sup> As we have seen the High Court took a contrary view and passed the holding to the joint family.<sup>4</sup> The Act accepts the Board's view.

*A, B, C and D* were four brothers. *A* died first leaving a son *E*, *B* and *C* died heirless. *A, B, C and D* were each entitled to a fourth of the holding. On *A*'s death *E* became entitled to his fourth. On the death of *A* and *C*, their brother *D* is entitled to their half, and hence the son of *D* is entitled to three-fourths of the holding and *E* to one-fourth.<sup>5</sup> The shares of *B* and *C* did not survive to *E* and *D*.

A holding belonged to two brothers *A* and *B*. *C* the grandson of *A*, succeeded to his half. *B* had two sons *D* and *E*. On *E*'s death his quarter share passed to *D*'s son, who thus became tenant of half. On the death of his son, this half passed to his widow, and on her death it comes to *C* by survivorship under the section and not to *E*'s daughter's son.<sup>6</sup>

Where brothers are tenants in common under section 38, the question of survivorship does not arise, and the court should on the death of each ascertain his heirs.<sup>7</sup> In this case, a tenant died leaving 5 sons, *A, B, C, D, E*. *C* died first without issue and the shares of *A, B, D* and *E* became one-fourth each. *E* died next, his fourth going to his widow *H*. Then *A* and *D* died, *A* without issue and *D* leaving a son *G*. *B* was the last to die. If *A* had died before *D*, his fourth share would have gone to his two surviving brothers, *D* and *B*, and the distribution of the shares would have been: *H* one-fourth and *B* and *D* three-eighths each. If *D* had predeceased *A*, the distribution of shares would have been: *H*— $\frac{1}{4}$ , *A*— $\frac{1}{4}$ , *B*— $\frac{1}{4}$ , *G*— $\frac{1}{4}$ . Hence in any case whether *A* or *D* died first, the share taken by *F* the widow of *B* would have been  $\frac{3}{8}$  or  $\frac{1}{2}$ , and

<sup>1</sup> *Sheo Balak Kosri v. Sami Nath*, XIV U D 51=14 L. R. Rev. 228.

<sup>2</sup> *Bindhyachal v. Sahdeo Rai*, XV U D. 322=15 L. R. Rev. 572.

<sup>3</sup> *Somaro v. Kesho Prasad*, B. R. 13 of 1912 (widow succeeds to interest of deceased joint brother); *Ram Charan v. Daryai*, III U. D. 312 (ib.); *Dharam Das v. Jhula*, B. R. 5 of 1925=6 L. R. Rev. 144=1925 R. C. 153; *Lal Girjesh Bahadur Pal v. Sumitra*, 6 L. R. Rev. 154=VI U D. 433=1925 R. C. 425=11 R. and Cr. L. J. 204=9 R. D. 189.

<sup>4</sup> 38 All 325

<sup>5</sup> *Jitwar Singh v. Budhu Singh*, 11 L. R. Rev. 226=14 R. D. 500.

<sup>6</sup> *Sumaru v. Puddan*, 1935 R. D. 398, A. I. R. All. 975.

<sup>7</sup> *Dwarka Prasad v. Narain*, 13 L. R. Rev. 70=XIII U. D. 108.

*D* would have taken  $\frac{2}{3}$  or  $\frac{1}{4}$ . The combined shares of *F* and *G* would have been  $\frac{1}{3}$  in any case and *H* would be entitled to  $\frac{1}{4}$ .

When *A*, one of three brothers, joint holders, separates his share from those of the others, and dies, his heirs have no interest in the shares of these others. If one of these also dies, *A*'s heirs can not claim a share. The shares of the undivided brothers will go to their heirs.<sup>1</sup>

**39.** (1) A tenant, other than a tenant of *sir* or a subtenant, may sub-let the whole or any portion of his holding under such restrictions as are imposed by this Act :

Right to sub-let  
his holding under such restrictions as are imposed by this Act :

Provided that no such sub-letting shall in any way relieve the tenant of any of his liabilities to his landholder.

(2) No tenant of *sir* and no sub-tenant shall sub-let the whole or any part of his holding.

Sub-section (1) reproduces section 28 of the Act of 1926, with slight alterations and omission of the words "subject to the provisions of section 27" and of "save with the landholders' written consent", and addition of the words "other than a tenant of *sir* or a sub-tenant."

Sub-section (2) corresponds to section 30 of the Act 1926. Now tenants of *sir* and sub-tenants are prohibited altogether from sub-letting the whole or any part of their holding.

**40.** (1) No occupancy tenant in Agra, or expropriary tenant or hereditary tenant shall sub-let the whole or any portion of his holding for a term exceeding five years, or within three years of any portion of such holding being held by a sub-tenant.

Restrictions on sub-letting

(2) No non-occupancy tenant shall sub-let the whole or any portion of his holding for a term exceeding one year or within one year of any portion of such holding being held by a sub-tenant.

1. Sub-section (1) reproduces sub-section (1) of section 29 of the Act of 1926, adding the words "tenant in Agra" after "occupancy" and "or hereditary tenant" and substituting "within three years" for "within five years," and omitting "except with the written consent of the landholder" between "shall" and "sub-let," with the result that now the written consent of the land-holder will not validate a sub-lease which contravenes sub-section (1).

Sub-sections (2) and (3) of the Act of 1926 relating to sub-letting by statutory tenants and their heirs are dropped.

Sub-section (2) reproduces sub-section (5) of section 29 of the Act of 1926, omitting the words "except with the written consent of the landholder" as in sub-section (1).

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<sup>1</sup> *Tokh Raj v. Banshi*, 15 L. R. Rev. 101=XV U. D. 68.

In Oudh, section 68-A restricted the right of sub-letting in the case of statutory tenants and their heirs. The words in section 40 read with section 39 empower occupancy tenants in Oudh and tenants holding on special terms in Oudh to sub-let as they please, which right they had before.<sup>1</sup>

2. **Ex-proprietary tenant**, see section 26; **occupancy tenant**, see section 28; **hereditary tenant**, see section 29; **non-occupancy tenant**, see section 31; **Landholder**, see section 3 (11); **holding**, see section 3 (7) for meaning.

3. **Sublet**.—Allowing a brother to cultivate a part of the land or associating him in the cultivation is not subletting.<sup>2</sup> Where a Hindu tenant assigns some plots in his holding to his brother's widow in lieu of maintenance, he remains the tenant and the widow is not a sub-tenant, though she was entitled to possession for life.<sup>3</sup>

4. The maximum period for which a tenant mentioned in the section can sublet is five years. He can grant a sublease for this period by one lease.<sup>4</sup> If he sublets for less than that period *e.g.*, only for a year, he must wait three years more before he can sublet again. He cannot sublet from year to year for five years consecutively.<sup>5</sup> A sub-lease for 5 years or less of one part of a holding puts a stop for 3 years to the tenant's power to sublet any other part or the whole.<sup>6</sup>

See notes to section 171 *post*.

A lease at a yearly rent was upheld for years as against a usufructuary mortgage which was illegal and of which the lessee had no notice at the date he took the lease, though a suit to get it registered was then pending.<sup>7</sup>

The section is contravened not only when the tenant grants a sublease for a term exceeding five years, but also when he allows the land to remain in possession of sub-tenants continuously for more than five years even if there is no sublease.<sup>8</sup>

Where a tenant of four plots mortgaged two with possession, re-sublet one within 5 years of a previous sub-letting, and sublet the fourth for more than a year by an unregistered sub-lease, he was ejected from all the plots.<sup>9</sup>

<sup>1</sup> *Bajj Nath v. Kalop Das*, 2 O. C. 292.

<sup>2</sup> *Pyare Lal v. Ram Bharose*, 1 U. D. 23—29 I. C. 36.

<sup>3</sup> *Ram Dayal v. Gopal*, VI U. D. 94—5 L. R. Rev. 121—10 Rev. and Cr. L. J. 156—1924 R. C. 94—9 R. D. 509; *Bhagirathi v. Shahbaz Khan*, III U. D. 419—6 Rev. and Cr. L. J. 9; *Abdul Samad Khan v. Shib Lal*, IV U. D. 232—6 R. D. 433.

<sup>4</sup> *Jaganmath Prasad v. Bhaiyalal*, B. R. 5 of 1910.

<sup>5</sup> *Rahat Husain v. Abdul Hafeez*, 30 I. C. 770—1 U. D. 30; *Badri Prasad v. Deota Prasad*, II U. D. 349—3 R. D. 244.

<sup>6</sup> *Badri Dayal v. Ambey Sahai*, XI U. D. 149—14 R. D. 493.

<sup>7</sup> *Habib-ullah v. Manrup*, 40 All. 228—16 A. L. J. 137—13 I. C. 514—4 Rev. and Cr. L. J. 54.

<sup>8</sup> *Badri Prasad v. Deota Prasad*, II U. D. 349; *Tula Ram v. Bahadur Singh*, B. R. 3 of 1931—XIII U. D. (B. R.) 1—13 L. R. Rev. 127—13 R. D. 1.

<sup>9</sup> *Vindhyachal Rai v. Muh, Husain*, XX U. D. 256.

A tenant may sublet in spite of a covenant to the contrary in his lease or kabuliati.<sup>1</sup> see section 4 (2) (d)

An illegal sublease does not affect a suit for ejectment or rent between a tenant and the sublessee,<sup>2</sup> and is valid until challenged by the land-holder.<sup>3</sup>

A sublease for 5 years granted by an occupancy tenant to one of his creditors in lieu of a debt due is void but a learned judge held that the sub-lessee could continue to cultivate so long as the landlord did not sue to eject the tenant and his sub-lessee, and therefore, the sub-lease could not be avoided at the suit of another creditor of the tenant, and hence the crops sown by the sublessee were his and not the occupancy tenant's,<sup>4</sup> nor did the court eject him at the instance of the sublessor.<sup>5</sup> A sub-lease for 5 years by a non-occupancy tenant was held to be voidable and not void.<sup>6</sup>

41. (1) The restrictions imposed by section 40 on the sub-letting of a holding or portion of a holding shall not apply when the lessor is a female, a minor, a lunatic, an idiot, or a person incapable of cultivating by reason of blindness or physical infirmity, or because he is in the military, naval or air service of the Crown.

Provided that in the case of a holding held jointly by more persons than one the provisions of this sub-section shall not apply unless all such persons are of one or more of the descriptions specified.

(2) A sub-lease which would be invalid but for the provisions of sub-section (1) shall not remain in force for more than three years after the lessor dies or ceases to come within any of the descriptions specified therein.

1. The section corresponds to sub-sections 6 and 7 of section 29 of the Agriculture Act, 1926. It widens the range of exemption by adding physical infirmity and military, naval or air service of the Crown as grounds of exemption. It shortens the period of validity from five years to three.

The words in italics were added by the United Provinces Tenancy (Amendment), Act, No. 1 of 1940.

<sup>1</sup> *Collector of Benares v. Murtaza Khan*, III U. D. 427=4 R. D. 241.

<sup>2</sup> *Raghunandan v. Surju Prasad*, 4 L. R. Rev. 340=1923 R. C. 440=10 Rev. and Cr. L. J. 29=V U. D. 552=7 R. D. 347; *Gajadhar v. Muh. Siddiq*, B. R. 1 of 1926=7 L. R. Rev. 255=VII U. D. xx=12 Rev. and Cr. L. J. 177=1926 R. C. 319; *Contra Dharman v. Sukhai*, 1923 A. I. R. All. 453=10 Rev. and Cr. L. J. 83=5 L. R. Rev. 31=1923 R. C. 439=73 I. C. 981=VI U. D. (H. C.) 23=8 R. D. 326.

<sup>3</sup> *Kauleshar v. Mangal*, XIV U. D. 473=14 L. R. Rev. 374.

<sup>4</sup> *Ganga Ram Singh v. Chait Ram*, 1934 A. I. R. All. 98=14 L. R. Rev. 762=XIV U. D. (H. C.) 718=17 R. D. 958.

<sup>5</sup> *Pattu v. Kanchedda*, XIV U. D. 335=17 R. D. 913.

<sup>6</sup> *Sis Ram v. Ram Dya*, XVI U. D. 190. This is doubtful now.

2. **The protection**—Only subleases are protected. Other transfers or agreements to transfer are subject to the ordinary disqualification. A weak-sighted but not blind tenant is not within the sub-section.<sup>1</sup> Where one of several joint tenants is a female, this clause does not empower the male tenants to sublet except as provided by the Act.<sup>2</sup> The proviso to sub-section (1) specially provides for this.

Where in a suit under section 171 for illegal sub-letting the tenant dies before the decree for ejectment, leaving a widow and minor sons as heirs, no decree for ejectment can be passed in view of the provisions of this section.<sup>3</sup>

3. **Sub-section (2).**—removes a difficulty and conflict of views which existed under the Act of 1901. The sub-section seems to be general in its terms so far as the classes mentioned in sub-section (1) are concerned. Where a minor tenant surrenders after executing a sub-lease, the sub-lessee is entitled to continue in possession for three years after the minor attains majority, and not for three years after the date of the surrender.<sup>4</sup>

Unless lessor is made to include his heirs or legal representatives his death will terminate a sub-lease granted by him on the expiration of three years after his death, although he may have left an heir of the class specified in sub-section (1).

Act II of 1901 did not affect subleases granted before 1902. A perpetual sublease did not terminate with relinquishment by the tenant, but continued in force so long as there were persons in existence on whom the occupancy holding of the sublessor might have devolved under s. 22 of Act II of 1901.<sup>5</sup> Subsection (2) of s. 32 of the Act of 1926 affected subleases to the extent that such a sublease came to an end either on the expiry of its term or the death of the tenant or the end of 10 years after the lesser of the tenant's interest whichever was the shortest.

Similarly a 16-year lease granted in 1898 was held to be binding on both the parties thereto after the death heirless of the tenant, so that the sub-tenant who, on such death, became the tenant-in-chief under s. 28 of Act II of 1901, could acquire occupancy rights only by 12 years' occupation after such death.<sup>6</sup>

<sup>1</sup> *Muk Mukarram Ali Khan v. Parva*, 1938 A. L. J. (B. R.) 29=XIX U. D. 164=1938 R. D. 421.

<sup>2</sup> *Chab Nath v. Debi Prasad*, 1 U. P. L. R. (B. R.) 7=52 L. C. 178=B. R. 3 of 1919=III U. D. 62=5 Rev. and Cr. L. J. 94=171=3 L. R. Rev. 272=5 R. D. 443. A landlord may by conduct or compromise turn a widow life occupancy tenant into a full tenant of the same class, as in *Ram Prasad v. Durgpal Singh*, 7 L. R. Rev. 321=1926 R. C. 389=VII U. D. 191=12 R. and Cr. L. J. 257=10 R. D. 530.

<sup>3</sup> *Banwari v. Bharatpur State*, XII U. D. 356=13 L. R. Rev. 177.

<sup>4</sup> *Fateh Singh v. Darshan Lal*, 14 L. R. Rev. 42=XIV U. D. 20.

<sup>5</sup> *Jagdambika Prasad v. Naubat Rai*, B. R. 11 of 1922=V U. D., ex. =4 L. R. Rev. 17=1922 R. C. 505=9 R. and Cr. L. J. 76.

<sup>6</sup> *Lakhranj v. Karan Singh*, 12 R. and Cr. L. J. 107=1926 R. C. 118=VII U. D. 93=7 L. R. Rev. 122=10 R. D. 449; *Azizur Rahman v. Balbhadar Prasad*, VI U. D. 444=7 L. R. Rev. 177=1926 R. C. 147=12 R. and Cr. L. J. 185=9 R. D. 28. But see *Abbas Ali v. Adhar Singh*, VU D. 247=3 L. R. Rev. 501=1922 R. C. 511=9 R. and Cr. L. J. 39=7 R. D. 446.

Under Act II of 1901, it was held that a widow who was an occupancy or an exproprietary tenant in her own right (and not merely holding a widow's estate) could grant a lease in the interest of due and proper management of the estate, which would not expire with her death, but it was expressly said that the case of a widow with merely a widow's estate was left undecided.<sup>1</sup> A perpetual lease granted by a lady who was taken to have become an exproprietary tenant in her own right was *perhaps* held to lapse with abandonment by her, as an issue as to abandonment was sent down.<sup>2</sup>

In *Sri Ram v. Mahar Singh*,<sup>3</sup> where a 30 years' lease granted by a Hindu widow of an occupancy holding was held to lapse with her death, it does not appear whether the lease had been granted before 1902, but she seems to have held only a widow's estate. Similar decisions were given in *Jhandu Singh v. Spl. Manager, Court of Wards*<sup>4</sup> (lease granted after 1902); *Badam v. Dalip*<sup>5</sup> (lease for 20 years, voidable on death or remarriage); *Makhhho v. Gulabi*,<sup>6</sup> (term indefinite, for a *nazrana*, the landholder not bound to repay the latter) In *Tirkha Singh v. Mangat Singh*<sup>7</sup> a sublease for 7 years in the ordinary course of management was held binding for its term on the landholder though the lessor had died or surrendered before that. In *Niranjan Singh v. Man Bhawan Singh*<sup>8</sup> a sublease for 5 years, being a reasonable one, was upheld for its full term, the widow lessor having died before the commencement of the Act of 1926.

Where a Hindu widow surrendered her holding after granting a long term sublease thereof, it was held that the sublease would be binding on the landholder during her life or the term of the sublease, whichever was the shorter period.<sup>9</sup>

It is thus clear that before the Act of 1926 a sublease granted by a widow holding a land in her own right as occupancy tenant was considered valid even after her interest had ceased, if such lease was for the benefit of the estate, and that a lease by a widow holding a life estate, merely as a widow, would not outlast her.

The Board of Revenue took the view that if the sublease was valid at the date of its grant, and the lessor surrendered or abandoned or died

<sup>1</sup> *Moti Chand v. Sultan Begum*, I U. D. 247=2 R. and Cr. L. J. 498=32 I. C. 713; *Ram Lal v. Zalim Singh*, IX U. D. 157=9 L. R. Rev. 329=12 R. D. 791.

<sup>2</sup> *Khushal Singh v. Bhagwan Das*, II U. D. 532=I U. D. 253=32 I. C. 857.

<sup>3</sup> II U. D. 560.

<sup>4</sup> II U. D. 530=3 R. and Cr. L. J. 114.

<sup>5</sup> IV U. D. 156=1 L. R. Rev. 149=6 R. and Cr. L. J. 249=6 R. D. 257.

<sup>6</sup> 9 L. R. Rev. 162=VIII U. D. 7=11 R. D. 1.

<sup>7</sup> VIII U. D. 58=8 L. R. Rev. 242=1927 R. C. 267=11 R. D. 384.

<sup>8</sup> XI U. D. 125=14 R. D. 449.

<sup>9</sup> *Ghulam Moinuddin v. Afzar Jahan*, 9 L. R. Rev. 89=12 R. and Cr. L. J. 91, VII U. D. 44=1926 R. C. 44=10 R. D. 129.

heirless before the expiry of its term, it would be binding under s. 32 (3) of the Act of 1926 for its full term or 5 years after such abandonment, surrender or death, whichever was the shorter period.<sup>1</sup>

In *Sheo Prasad v. Ali Begam*<sup>2</sup> the decision was that under s. 32 (3) of the Act of 1926 it was immaterial whether the sublessor was the occupancy tenant in her own right or as a life tenant, and that the sublease would hold good for its full term. The report does not show whether the full term or 5 years would have been the shorter period; probably it was the full term.

The law was modified in any event as to leases given by persons holding in their own right to the extent that the term of the lease was limited to five years after the death of the lessor or the cesser of the condition which entitled him to grant a longer sublease than other tenants of his class could. A perpetual sublease was held to be binding as between the lessee and his sub-lessor and their successors.<sup>3</sup>

**42.** A sub-lease for a term exceeding one year or from  
Registration of sub year to year, shall be made by a registered  
leases. instrument only.

This reproduces section 29 (4) of the Act of 1926.

**Registered**--as defined in section 3 (17).

A sub-lease for a year does not require registration.

Where the tenant-in-chief of a land sub-lets it for one year either orally or without a registered instrument, and the sub-lessee holds over after the expiration of one year, his continued occupation is not unlawful and does not make him a trespasser, but he continues to be a tenant with all the rights and privileges attached by the Act to that portion, one of which is that he cannot be ejected or evicted otherwise than in accordance with the provisions of the Act. Hence the grant of a sub-lease over his head to another does not affect him or amount to his ouster or to an assignment of the rent due from him to that new lessee, and the latter cannot sue him for the rent, unless after this second sub-lease he has agreed with the new sub-lessee to become his sub-tenant and pay the rent to him.<sup>4</sup>

If a sub-tenant without a registered lease is allowed to remain in possession after the expiration of one year, the zamindar should sue to

<sup>1</sup> *Chandrawat Koor v. Hanuman Prasad*, B. R. 5 of 1929=XI U. D. (B. R.) 1=11 L. R. Rev. 57=14 R. D. 1; *Kuldip Singh v. Rafiq Husain*, B. R. 6 of 1936=XVII U. D. 220=1937 R. D. 286, overruling *Kishan Sarup v. Gulsher Khan*, (B. R.) 11 of 1933=XIV U. D. (B. R.) 21; *Muh. Sajjad Ali Khan v. Bishambhar Das*, XVII U. D. 289 must be deemed to be overruled too.

<sup>2</sup> X U. D. 130=13 R. D. 536.

<sup>3</sup> *Khushal Singh v. Chetram*, VII U. D. 97=7 L. R. Rev. 25=1926 B. C. 125=10 R. D. 452.

<sup>4</sup> *Mangali v. Madan Gopal*, XVII U. D. 176.

eject him. Where dispossession of the tenant took place after a year of occupation under an oral or unregistered lease, the sub-tenant was held to have no title to sue for possession and damages the person who had dispossessed him and was in possession.<sup>1</sup>

*N. B.*—Section 29 (8) of the Act of 1926, which made all sub-leases terminate with the settlement has not been re-enacted.

**43.** When a tenant has sub-let, the successor in interest of such tenant shall be bound by the terms of the sub-lease, in so far as they are consistent with the provisions of this Act.

Successor bound by  
sub-lease.

This reproduces section 31 of the Act of 1926.

The successor in interest, *e.g.*, his heir is bound only by such terms of the lease as are consistent with the provisions of the Act and the conditions of the tenancy.

**44.** (1) Every transfer, other than a sub-lease, made by a tenant in contravention of the provisions of this Act, and every sub-lease made by a tenant of *sir*, or by a sub-tenant in contravention of the provisions of sub-section (2) of section 39, shall be void.

Transfers which are  
void or voidable.

(2) Every sub-lease made by a tenant in contravention of the provisions of this Act, other than a sub-lease which is void under sub-section (1), shall be voidable at the option of the landholder.

1. Sub-section (1) re-produces with some changes section 34 of the Act of 1916, and sub-section (2) is sub-section (2) of the said section 34. Section 34 corresponded with section 31 (1) of the Act of 1901. The words "in contravention of the provisions of section 27" have been dropped, because the provisions of that section find no place in this Act. The words "of *sir*, or by a sub-tenant in contravention of the provisions of sub-section (2) of section 39" have been added to sub-section (1), with the result that a sub-lease made by a tenant of *sir* or by a sub-tenant is void altogether.

2. The difference between *void* and *voidable* transactions mentioned in the two sub-sections of this section should be noted. Any transfer other than a sub-lease, and a sub-lease made by a tenant of *sir* or by a sub-tenant are void, *i. e.*, of no effect. Other sub-leases which contravene section 40, are voidable, *i. e.*, are valid until the landholder chooses to avoid them, and until he does so, he cannot forcibly oust the sub-tenant.<sup>2</sup>

<sup>1</sup> *Sarnam Prasad v. Sunder Sahu*, 1932 A. L. J. 1027—1933 A. I. R. All. 120—XIV U. D. (H. C.) 26—14 L. R. Rev. 23.

<sup>2</sup> *Kunwar Lal v. Darshan Lal*, XIII U. D. 142—13 L. R. Rev. 343, T. A.—36



3. Sections 40, 41 and 42 show what sub-leases are valid. They are :—sub-leases by

- (a) an exproprietary or hereditary or occupancy tenant for 5 years or less made initially or after three years of the end of a previous sub-letting ;
- (b) by a non-occupancy tenant for one year made initially or after one year of the end of a previous sub-letting ;
- (c) by a female, minor etc. mentioned in sub-section (1) of section 41 for a period exceeding the period mentioned therein and
- (d) by a registered instrument where the period of a sub-lease exceeds one year.

A sub-lease by an occupancy tenant for a term exceeding one year or from year to year, not contained in a registered instrument, is voidable as being in contravention of section 42.<sup>1</sup>

### *Extinction of tenancies.*

Tenancy when extinguished.

45. The interest of a tenant shall be extinguished—

(a) when he dies, leaving no heir entitled to inherit, in accordance with the provisions of this Act ;

(b) in land, which has been sold in execution of a decree for arrears of rent or from which he has been ejected in execution of a decree or order of a court ;

(c) subject to the provisions of sections 82 to 88, by surrender, or by abandonment ;

(d) in land which has been acquired under the provisions of the Land Acquisition Act I of 1894 ;

(e) subject to the proviso to section 46, by merger ;

(f) where the tenant has been deprived of possession and his right to recover possession is barred by limitation.

1. This section corresponds to section 35 of the Act of 1926 with slight alterations. Clauses (a) to (d) correspond to section 18 of the Act of 1901 ; clauses (e) and (f) were not in that Act.

2. It must be shown that a tenancy has come to an end in one of the ways mentioned in this section. The mere payment of rent by a sub-tenant to the zamindar or the mere entry in the patwari's papers that the sub-tenant was holding direct from the zamindar is not enough to annul the right of an occupancy tenant.<sup>2</sup> Nor the fact that the tenant has been out of possession for good many years,<sup>3</sup> unless clause (c) or clause (f) applies

<sup>1</sup> *Tula Ram v. Bahadur Singh*, B. R 3 of 1931=XIII U. D. (B. R) 1=13 L. R. Rev. 127.

<sup>2</sup> *Sitlu v. Ram Sarup*, V U. D 41=1922 R. C. 37=3 L. R. Rev. 158=7 R. D. 55.

<sup>3</sup> *Suga v. Shah Muhammad Husain*, V U. D 95=1922 R. C. 35=3 L. R. Rev. 255=7 R. D. 152.

3. **Clause (a) : Failure of heirs**—Sections 35 to 37 indicate the persons entitled to inherit under the Act. For groveholders see section 206. Where a tenant has died without heirs, and the landholder has recognised an outsider as the heir, this latter will not be entitled to redeem a mortgage.<sup>1</sup> If a tenant has died leaving an heir, the latter is not affected by any proceedings for ejectment taken by the landholder against a person who was not the heir but whom the landholder recognised as such.<sup>2</sup>

By becoming a *sanyasi* and leaving his uncle in charge of his holding the tenant does not die, so as to attract the operation of cl. (a).<sup>3</sup>

4. **Clause (b) : Sale in execution of rent decree or ejectment under decree or order**—provided there is no reversal of the sale decree in appeal or revision, or otherwise. Execution of the decree for ejectment alone and not the decree itself causes extinction.<sup>4</sup>

Where a decree for arrears of rent was passed against a tenant who had executed a usufructuary mortgage of his holding before 1901, and the zamindar applied for his ejectment under section 59 of Act 2 of 1901, and the mortgagee resisted him in obtaining possession, the zamindar could sue him for ejectment in a Civil Court, as the mortgagee's right to occupy ceased with the tenant's right of tenancy.<sup>5</sup> Ejectment must be by a Revenue Court or the court of a District Judge on appeal in a revenue suit, and as a tenant, not as mortgagee, or licensee, and not in execution of a civil court decree for redemption. In the latter case, the person ejected may sue under section 183.<sup>6</sup>

5. **Clause (c) : Surrender or abandonment.** - See sections 82 to 89.

Surrender means surrender after notice as provided in the Act. An occupancy tenant cannot enter into a covenant to surrender on the expiration of the term of a *kabuliat* which he has executed in favour of his landholder. Such a covenant is invalid and cannot be enforced,<sup>7</sup> and it was also held that, even if given effect to privately, the surrender is invalid at least as against the heirs of the tenant.<sup>8</sup>

Where a mother made a gift of her holding to her daughter and the latter's name was recorded, this is abandonment by the mother, and

<sup>1</sup> *Ram Jatan v Radha Kishun*, 1915 A. I. R. All 15=11 Rev. and Cr. L. J. 68=12 Rev. and Cr. L. J. 284=5 L. R. Rev. 239=6 L. R. Rev. 32=VI U. D. (H. C.) 241, 391=1924 R. C. 359=9 R. D. 414

<sup>2</sup> *Ram Jatan v Ram Prasad*, 111 U. D. 193=1 U. P. L. R. 4=52 I. C. 186=4 B. D. 44.

<sup>3</sup> *Khuski Ram v. Talib*, 15 L. R. Rev. 168=XV U. D. 128.

<sup>4</sup> *Badlu v. Jamola*, 11 U. D. 402=3 R. D. 472; *Babu Lal v. Pal* 1938 A. L. J. (B. R.) 1.

<sup>5</sup> *Shahzad Singh v. Bachor Singh*, 1930 A. L. J. 599=1930 A. I. R. All. 352.

<sup>6</sup> *Baij Nath Pathak v. Gayi Din Singh*, 1934 A. L. J. 389=XV U. D. (H. C.) 125=15 L. R. Rev. 378=1934 A. I. R. All 725=18 R. D. 502.

<sup>7</sup> *Natha v. Mian Khan*, 6 A. L. J. 649.

<sup>8</sup> *Kauri v. Ganga*, 10 All. 615=8 A. W. N. 239; *Beni Singh v. Ghulam Ali*, B. R. 8 of 1885

since the gift is illegal the daughter can be ejected as a non-occupancy tenant.<sup>1</sup>

6. **Clause (d) : Land acquired.**—under the Land Acquisition Act. When such land is restored, it is bereft of the rights of occupancy.

7. **Clause (e).**—Gives effect to a well recognised rule of law,

8. **Clause (f).**—Gives effect to rulings under the earlier Acts noted in the footnote.<sup>2</sup>

Where an exproprietary tenant has been deprived of possession and his right to recover possession is lost by time, his rights are extinguished.<sup>3</sup>

Where the mortgagor under a usufructuary mortgage had not taken possession of the exproprietary holding for more than six months, his rights as such tenant were lost, but not his right to recover, on redemption, the *khudkasht* (or *sir*) land of the holding.<sup>4</sup>

Where an occupancy holding land has after sub-mergence for several years reappeared, and the zamindar makes arrangement about it with another person, the tenant ought to sue under section 183 within three years of the arrangement or his rights will be deemed to have been extinguished.<sup>5</sup>

Where a tenant becomes a *sanyasi* leaving his uncle in charge of his holding, the uncle is deemed to hold for and not adversely to him, so that cl. (f) does not apply.<sup>6</sup>

The possession of a person put in by an occupancy tenant as mortgagee does not become adverse on redemption unless and until he asserts that he holds the land in his own right.<sup>7</sup>

Where a widow in possession surrenders a family holding to the landholder who gets into possession, a suit by the members of the family to recover must be brought within three years of the landholder getting into possession, or their rights will be extinguished under cl. (f).<sup>8</sup>

<sup>1</sup> *Sudarshan Prasad v. Jas Murta*, 10 L. R. Rev. 34=X U. D. 20=13 R. D. 193.

<sup>2</sup> *Dalip Rai v. Deoki Rai*, 21 All. 204; *Bulbhadar v. Somaru Rai*, 13 A. L. J. 295; *Bhikari Singh v. Jolkhan*, 1922 A. L. R. All. 124=V U. D. (H. C.) 120=1922 R. C. 423=4 U. P. L. R. 104=66 I. C. 856=7 R. D. 21; *Kanhai v. Ram Sunder*, IV U. D. 623=2 U. P. L. R. 148=5 R. D. 383; *Riazuddin v. Shibba Singh*, IV U. D. 458=8 Rev. and Cr. L. J. 159=2 L. R. Rev. 144=4 U. P. L. R. 15=5 R. D. 235; *Dasrath v. Hanuman Prasad*, 1927 R. C. 207=VII U. D. 63=8 L. R. Rev. 189=10 R. D. 225

<sup>3</sup> *Inta Khatun v. Ghani Khan*, 15 L. R. Rev. 173=XV U. D. 102.

<sup>4</sup> *Ghuran v. Hira Lal*, 1938 A. L. J. (B. R.) 52=1938 R. D. 391.

<sup>5</sup> *Ram Sanahi v. Lakhraj Singh*, XVII U. D. 232=1936 R. D. 336.

<sup>6</sup> *Khushi Ram v. Talab*, 15 L. R. Rev. 168=XV U. D. 128.

<sup>7</sup> *Jageshar v. Gaya Din*, 14 L. R. Rev. 87=XIV U. D. 81.

<sup>8</sup> *Sundra v. Bisheshar*, XIII U. D. 68=13 L. R. Rev. 97.

The tenant must have been deprived of possession and his right to recover possession must be barred by limitation, but is this to be a limitation provided by this Act or the Limitation Act or any other Act?

A tenant may be deprived of possession (i) by the landholder, (ii) by some one claiming through or under the landholder, (iii) by a co-tenant, or (iv) by an utter stranger. In the first two cases, his remedy to recover possession will be a suit under section 183, which becomes barred on the lapse of three years, and as we have seen above he loses all rights to the land. Where the landlord took possession of the land on surrender by the tenant or of the family of tenants, a suit by the other members for declaration of title to the land brought after three years is barred.<sup>1</sup> In the third case, since a co-tenant claims through or under the landholder, a suit to recover possession will fall under section 183 and must be brought within three years of the dispossession; but in such a case unless there is proof of ouster, there is no depriving of possession.<sup>2</sup> In the first case, the members opined that the period of adverse possession must extend to 12 years; and in the second case they held that it must be 12 years, as on the finding that adverse possession had commenced in 1917, more than the period of limitation before the suit, it ought to have been otherwise dismissed. They did not consider the effect of the language of section 99 of the Act of 1926. In a case of dispossession by an utter stranger, the limitation will be 12 years.<sup>3</sup>

Adverse possession extinguishes the tenancy but does not make the adverse possessor the tenant of the holding. *Vis a vis* the landholder such person remains a trespasser and may be sued under section 180 as such.<sup>4</sup>

A landlord accepting on behalf of his tenant rents from the sub-tenants or occupiers of a fixed-rate holding, is not in adverse possession as against the tenant.<sup>5</sup>

Possession of one of several co-heirs is not adverse to others, even though absent on service.<sup>6</sup>

Where a donor continues in possession after making a gift of a property, his possession is adverse to the donee.<sup>7</sup>

If one of two tenants of a fixed-rate holding transfers more than his share and gives possession to the transferee, adverse possession against the other co-tenant begins to run from the date of transfer of possession.<sup>8</sup>

<sup>1</sup> *Sundra v. Bishehar*, 13 L. R. Rev. 97=XIII U. D. 68; *Murli Manohar v. Chumna*, XIV U. D. 277=14 L. R. Rev. 542.

<sup>2</sup> *Ramnan v. Mukut Bihari*, XII U. D. 78=12 L. R. Rev. 141=12 R. D. 78; *Kedar v. Baran*, 12 L. R. Rev. 132=XII U. D. 79=15 R. D. 259; *Bachcha Shukla v. Gajadhar Singh*, XVI U. D. 27.

<sup>3</sup> *Ram Saran v. Waris Husain*, VII U. D. 23=7 L. R. Rev. 196=1926 R. C. 241=10 R. D. 23

<sup>4</sup> *Nimar v. Rang Nath*, XIX U. D. 198=1938 R. D. 602

<sup>5</sup> *Nar Singh Rai v. Radha Gorind Singh*, XIV U. D. 68.

<sup>6</sup> *Mansab Ali v. Mathura*, XV U. D. 495.

<sup>7</sup> *Salik Ram Sinha v. Junki*, 1939 A. L. J. (B. R.) 81.

<sup>8</sup> *Manik v. Atiq Ahmad*, XX U. D. 289=1939 R. D. 1.

Adverse possession is a question of mixed law and fact ; if it is against a life-estate holder, it will not confer title as against the reversioner.<sup>1</sup>

Where one of several fixed-rate tenants transfers his interest to an outsider within the knowledge of the rest, the outsider's possession is adverse as against them, and if it lasts for 12 years, he stands in the shoes of the transferor as against them.<sup>2</sup>

*Other cases*—The section does not mention one other case in which a tenant's interest is extinguished, namely, by diluvion.

The status of a tenant is not affected by wrong entries made at a partition to which he was not a party. Hence, if before a partition A was the tenant of the cultivated portion of a plot and at the partition this portion is wrongly shown as fallow, and he is shown as the non-occupancy tenant of another portion of the plot which is really waste, his tenancy of the first portion is not affected.<sup>3</sup>

**46.** Where a tenant acquires or succeeds to the entire proprietary right in his holding or where the holder of the entire proprietary right over a holding inherits or otherwise acquires the holding, the tenancy is extinguished :

Merger

Provided that, if the transaction by which the proprietary right was acquired, is afterwards set aside by the order of a competent court, or if such a right is lost in consequence of the exercise of a right of pre-emption, the tenancy shall revive.

*Explanation*—In this section the words “proprietary right” include the rights of an underproprietor, of a permanent lessee, and of a permanent tenure-holder.

1. This reproduces section 36 of the Act of 1926 with some addition, viz, “or where the holder...acquires the holding” which supplies a serious defect in the earlier Act. The explanation is new and extends the section to under-proprietors to make the rule of merger applicable to Oudh, and to permanent-tenure holders, and perpetual lessees.

For meanings of underproprietor, permanent lessee and permanent tenure-holder see section 3(3), section 3(15) and section 22 respectively.

It will be noticed that in order that merger may occur on the landlord acquiring a tenant's interest, the acquirer must be the holder of the *entire* proprietary or under-proprietary or other right over the holding, and the holding itself and not merely the tenant's interest in it must be acquired by inheritance or otherwise. Hence acquisition of a holding by a fractional owner, *e g*, by one of several owners, will not produce merger.

<sup>1</sup> *Raj Bahadur Singh v. Ram Harakh*, XX U. D. 305=1939 R. D. 15.

<sup>2</sup> *Raj Bahadur Singh v. Ram Harakh*, XX J. D. 305=1939 R. D. 15.

<sup>3</sup> *Janki v. Jar Khandi Singh*, 12 L. R. Rev. 405=XII U. D. 299=15 R. D. 727.

This section provides for merger caused by acquisition of the entire proprietary interest by a tenant, or the whole body of tenants.<sup>1</sup> Purchase by one of two co-tenants did not effect merger.<sup>2</sup>

When a non-occupancy tenant takes a mortgage of proprietary rights in plots, including those let to him, his rights as tenant are not merged but only suspended during the currency of the mortgage. On redemption, his tenant rights revive and he becomes a statutory tenant.<sup>3</sup>

We have already dealt with cases of merger in the case<sup>7</sup> of fixed-rate tenant in note 8 to section 23 at pages 126-27.

In 1879 two widows who had life interest sold their property to A, who also happened to be occupancy tenant of certain land in the same zamindari. The occupancy rights, on account of the purchase, were assumed to have merged in the proprietary right. In 1912 A sold his proprietary rights to his son B. At that time, A held certain land as *sir*, the sale made him the exproprietary tenant thereof. Between 1879 and 1912 A had also developed a grove. On a suit by the reversioners of the husband of the two widows, after their death, for ejectment of B (A having already died) it was held that as regards the once occupancy land of A, his rights revived on the sale of 1912 and on his death, descended to B, who could not be ejected therefrom; that as regards the exproprietary tenancy the widows of 1879 had only a life interest in the zamindari and the exproprietary rights created by the transfer of 1912 by A could exist only so long as the widows were alive, and the land reverted to the reversioners as *sir* on the death of the widows, and the exproprietary tenant was liable to ejectment as *sir*-tenant: and that as regards the groves they passed to the reversioners.<sup>4</sup>

Where a tenant of certain plots acquires a *theka* of the proprietary rights of the owner in lands including those plots, his rights as tenant therein merge (and are not merely in abeyance) during the term of his *theka*, and he must after the termination of the *theka* be admitted *de novo* to the tenancy to have the status of a tenant.<sup>5</sup> On merger in such a case as the result of a partition, his sub-tenants become tenants-in-chief, but in the absence of a fresh contract, only non occupancy tenants.<sup>6</sup>

Where the heir of a tenant succeeds by inheritance also to the proprietary rights, there is merger.<sup>7</sup>

<sup>1</sup> *Nadir Khan v. Ahmed Sher Khan*, B. R. 7 of 1929=11 L. R. Rev. 85=XI U. D. (B. R.) 5=14 R. D. 19.

<sup>2</sup> *Khuman Singh v. Ram Sarup*, III U. D. 49=54 I. C. 276

<sup>3</sup> *Bharon v. Buntu Ram*, 11 L. R. Rev. 224=XI U. D. 435=14 R. D. 470; *Tegh Singh v. Har Baksh Singh*, XVI U. D. 170=16 L. R. Rev. 186

<sup>4</sup> *Shib Charan v. Suraj Prasad*, XVII U. D. 184.

<sup>5</sup> *Muhammad Bulesh v. Pubittra Pandain*, 12 L. R. Rev. 55=15 R. D. 212 This is open to question.

<sup>6</sup> *Umrao Singh v. Dina Singh*, XVIII U. D. 336=1937 R. D. 522.

<sup>7</sup> *Ganga Singh v. Prag Singh*, XIII U. D. 269=13 L. R. Rev. 390.

Where to all intents and purposes the proprietors and the tenants are the same people, and the family of the proprietors by purchase becomes the sole owner of land entered as occupancy land of one of them, there is a merger of the occupancy land with the proprietary rights<sup>1</sup>

**Proviso.**—Provides for revival of merged tenancy rights in two events, *viz.*, setting aside by a court of the transaction by which the proprietary rights were acquired, and the loss of proprietary rights by pre-emption.

**47.** Except as otherwise provided in sub-section (3) and sub-section (4), the extinction of the interest of a tenant, other than a permanent tenure-holder or a fixed-rate tenant, shall operate to extinguish the interest of any tenant holding under him.

Rights of sub-tenant and mortgagee on extinction of tenant's interest.

(2) Subject to the provisions of section 16 of the Land Acquisition Act I of 1894, the extinction of the interest of a permanent tenure-holder or a fixed-rate tenant shall not of itself affect the rights of any transferee from such tenant under a valid transfer, but after the transfer all covenants binding and enforceable as between the landholder and the tenant shall be binding and enforceable as between the landholder and the transferee.

(3) Where, at the time of the extinction by surrender or abandonment of the interest in a holding of a tenant, other than a permanent tenure-holder or a fixed-rate tenant, there is in existence a valid sub-lease or mortgage of the whole or of a portion of the holding executed before the first day of January, 1902, all covenants binding and enforceable as between the tenant and the sub-tenant or the mortgagee, as the case may be, shall, subject to the provisions of sub-section (5), be binding and enforceable as between the tenant's landholder and the sub-tenant or the mortgagee for the remainder of the term of the sub-lease or mortgage, or for the lifetime of the tenant, or for ten years, whichever period may be the shortest.

(4) Where, at the time of the extinction, by surrender or abandonment, or by death without any heir entitled to inherit such interest, of the interest in a holding of a tenant, other than a permanent tenure-holder or fixed-rate tenant, there is in existence a valid sub-lease of the whole or of a portion of the holding, executed on or after the first day of January, 1902, all covenants, binding and enforceable as between the tenant and the sub-tenant shall, subject to the provisions of sub-section (5), be binding and enforceable as between the tenant's landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter.

<sup>1</sup> *Abhilakh v. Sri Bhagwant Naik*, 14 I. R. Rev. 37—XIV U. D. 18.

(5) In the cases referred to in sub-section (3) and sub-section (4), if the rent payable by the sub-tenant is less than that hitherto payable by the tenant, the sub-tenant shall have the option of vacating the holding, but shall, if he continues in possession, be liable to pay rent at the rate hitherto payable by the tenant.

(6) Nothing in this section shall have the effect of limiting the right of the landholder to have the rent of any holding enhanced under the provisions of Chapter VI of this Act, or to set aside any sub-lease voidable under the provisions of sub-section (2) of section 44.

1. The section reproduces parts of section 32 of the Act of 1926. Sub-section (1) reproduces sub-section (1) without the proviso and substituting 'other than a permanent tenure-holder or fixed rate tenant' for 'whose interest is not transferable'; sub-section (2) is new; sub-section (3) and (4) reproduce sub-sections (2) and (3) respectively; sub-sections (5) and (6) are in effect sub-sections (4) and (5) respectively; sub-sections (3), (4), (5) and (6) correspond to sections 28, 29 of the Act of 1901.

**Landholder**, see section 3 (11); **tenant**, see section 3 (23); **holding**, see section 3(7) for meaning

2. **Sub-section (1).**—Only the interest of a sub-tenant holding under a tenant whose interest is extinguished comes to an end with such extinction. Section 45 shows when the interest of a tenant is extinguished. Sub-section (1) refers to extinction of interest of a tenant mentioned in section 45, whereas sub-section (3) refers to such extinction by surrender or abandonment, and sub-section (4) to such extinction by surrender, abandonment or death without heir. Therefore if a sublease for 5, 3 or 1 year, as the case may be, is really a mortgage, it will not be protected. On ejectment of the tenant, the interest of his sub-tenant ceases, and if the latter continues to hold on, he is a trespasser<sup>1</sup>

A sub-tenant continuing in possession after the extinction of the tenancy-in-chief does not become a hereditary tenant without a fresh contract with the zamindar. Such contract is not implied from the fact that he has paid off the arrears of rent due from the late tenant.<sup>2</sup> If sub-section (4) applies his tenancy lasts for the period mentioned therein.

The sub-tenant of a Hindu widow holding under a lease granted by her is on her death, liable to ejectment under section 180 though not as a non-occupancy tenant as she could not grant a lease to last beyond her life; and the sub-tenant does not hold under a valid sub-lease, but his case falls under sub-section (1)<sup>3</sup>

3. Sub-section (2). Provides that the interest of a transferee from a permanent tenure-holder or a fixed-rate tenant is not extinguished with the extinction of the interest of such a tenant. We have seen that the interest of such a tenant is transferable (section 32). The words "subject to the provisions of section 16 of the Land Acquisition Act"

<sup>1</sup> *Bindra Ban v. Tikam Singh*, 9 L. R. Rev. 345=IX U. D. 167; *Raghu Nath Prasad v. Sahdeo*, XIV U. D. 98=14 L. R. Rev. 209.

<sup>2</sup> *Katesar v. Islok*, 14 L. R. Rev. 143=XIV U. D. 428

<sup>3</sup> *Muhammad Sajjad Ali Khan v. Bishambar Das*, XVII U. D. 389=1936 R. D. 496.



imply that in case the Government acquires the land the interest of the transferee will cease.

4. **Sub-section (3)**—The sub-section applies to sub-leases and mortgages executed before 1902, where the extinction of the tenant's interest is by surrender or abandonment.

To attract sub-section (3), the tenant sublessor must have had a non-transferable interest, and the sub-lease or mortgage must have been valid at the time it was made.<sup>1</sup> As an occupancy tenant before 1902 could grant subleases for any term, the sub-section applies to all sub-leases granted by tenants before 1902.

Usufructuary mortgages were valid only to the extent shown above in note 5 to section 33 under the caption *covenants in mortgages* at p. 236 *et seq*?

Abandonment does not take away the right of a mortgagee of a fixed rate holding to be redeemed.<sup>2</sup>

Extinction of the interest of a tenant for any cause other than surrender or abandonment will not protect under sub-section (3), a sub-lessee or mortgagee from before 1902. His interest will also cease. For instance, if the tenant is ejected for non-payment of rent, his usufructuary mortgagee must give up possession to the landholder, or he exposes himself to a suit under section 180 or a civil suit.<sup>3</sup> If, however, the terms of the tenant's own lease empower him to transfer without restriction, and he executes a usufructuary mortgage, his ejection for arrears of rent was held under the Act of 1901 not to put an end to the mortgage or defeat the rights of the auction-purchaser in execution of a decree for sale of the mortgagor's rights.<sup>4</sup> Where, however in a proceeding under section 81 of the Act of 1926, the mortgagee offered to pay up the arrears, there could be no ejection of the tenant and sub-section (3) could be applied on the basis that the tenant had surrendered his holding.<sup>5</sup>

So if the tenancy was lost by merger, under section 45(e). According to section 46 merger happens when the tenant acquires or succeeds to the entire proprietary right in the holding. Section 47(3) read literally extinguishes the mortgage or sub-lease on such merger. Equitable considerations may, however, induce the Court to permit such a sub-lessee or mortgagee to continue in possession, or in any case to compel the tenant to repay the mortgage money.

Cessation of interest by adverse possession under section 45(f) will produce the same result.

Before 1901, a usufructuary mortgage of *sir*-land was created by a zamindar. After 1902, the zamindari rights were sold by auction and the

<sup>1</sup> *Chandrawati Koer v. Hanuman Prasad*, B. R. 5 of 1929=XI U. D. (S. D.) 1.

<sup>2</sup> *Ram Khelawan v. Brij Lal*, 21 A. L. J. 296=1923 A. I. R. All. 295=V U. D. (H. C.) 172.

<sup>3</sup> *Shahsard Singh v. Bachchoo Singh*, 1930 A. L. J. 599=1930 A. I. R. All. 352=XI U. D. (H. C.) 130=11 L. R. Rev. 52=126 I. C. 362=14 R. D. 152; *Ramanuj Prasad v. Mundoo*, XI U. D. 123=14 R. D. 447.

<sup>4</sup> *Bahadur v. Moti Chand*, 47 All. 589=23 A. L. J. 406=1925 A. I. R. All. 580=VI U. D. (H. C.) 458=11 R. and Cr. L. J. 184=6 L. R. Rev. 133=1925 R. C. 276=88 I. C. 224=9 R. D. 181.

<sup>5</sup> *Ramanuj Prasad v. Mundoo*, XI U. D. 123.

zamindar became the exproprietary tenant of the land, which, however, continued in possession of the usufructuary mortgagee as his mortgage attached itself to the tenancy. On the death of the ex-zamindar, *i. e.*, exproprietary tenant, the new zamindar sued to eject the mortgagee. It was held that he could do so as the death of the exproprietary tenant ended his tenancy under section 45(a), and with it the mortgage became extinguished<sup>1</sup>. The case is not covered by sub-section (3) of section 47, but is in any event a hard one for the mortgagee.

*Surrender or abandonment*, see sections 82-89. One must bear in mind section 82(1) which permits a surrender of a holding, sublet or mortgaged, for in other cases, surrender must be followed by surrender of possession. Sub-sections (2) and (3) proceed upon the basis that a tenant has surrendered in spite of the existence of valid subsisting mortgage or sublease created by him, and point out the effect upon the rights of the mortgagee or sublessee. Section 87 also shows that there may be abandonment in spite of a mortgagee or sublessee being in possession if the sub-lease was not in favour of one who is not his prospective heir.

If a tenant disappears, and the land has been legally sublet by him, the arrangements between the tenant and the sub-tenant are binding on the landholder for the remainder of the term of the sub-lease.<sup>2</sup>

**All covenants, etc.**—The sub-section terminates the previous conflict which existed between the views of the High Court<sup>3</sup> and the Board of Revenue,<sup>4</sup> the former being in favour of protection of such covenants and the latter not being so.

<sup>1</sup> *Bhawani Prasad v. Jai Jai Ram*, 1928 A. I. R. All. 414=IX U. D. (H. C.) 171 =9 L. R. Rev. 170=114 I. C. 903=12 R. D. 277.

<sup>2</sup> *Biba Kuur v. Ilahi Baksh*, XVI U. D. 310.

<sup>3</sup> *Badri Prasad v. Sheo Dhun*, 18 All. 354; *Sham Das v. Butul Bibi*, 24 All. 538; *Rannu v. Rafiuddin*, 27 All. 92; *Brij Kumar Lal v. Sheo Kumar*, 37 All. 444; *Chhaddu v. Sheo Mangul Singh*, 39 All. 186; *Jai Gopal Naram v. Uman Dat*, 8 A. L. J. 649; *Sri Mahariya of Benares v. Bauleshar Singh*, 1939 A. L. J. 120=1939 A. I. R. All. 210=1939 R. D. 101; *Kumar Sautwar v. Bishun Mohan*, 1923 A. I. R. All. 263=21 A. L. J. 820=V U. D. (H. C.) 118=9 Rev. and Cr. L. J. 26, 127=1922 R. C. 558=3 L. R. Rev. 553=73 I. C. 65=7 R. D. 15.

<sup>4</sup> *Muh. Sher Khan v. Ramdhari Rai*, V U. D. 230=1922 I. C. 282=7 R. D. 224; *Narsingh v. Kariya*, IV U. D. 311=6 R. D. 409; *Gauri Shankar v. Nageshar*, 1925 R. C. 159=8 R. D. 488; *Gulzari Mal v. Lachmi Chand*, B. R. 1 of 1893; *Ram Kishore v. Swarath Rai*, 11 U. D. 174; *Bundesri Prasad v. Ranji*, III U. D. 191=6 Rev. and Cr. L. J. 81=4 R. D. 34; *Uman Datt v. Junardhan Prasad Singh*, III U. D. 249=5 Rev. and Cr. L. J. 33=4 R. D. 76; *Basri v. Hira Lal*, IV U. D. 291=7 R. and Cr. L. J. 257=3 U. F. L. R. 25=6 R. D. 491; *Durga Prasad v. Jayat Singh*, IV U. D. 692=3 L. R. Rev. 201=5 R. D. 98; *Parshotam Das v. Deonandan Singh*, III U. D. 305=4 R. D. 123; *Mahabal Singh v. Radha Rawan*, II U. D. 258; *Naubat v. Raghbir*, IV U. D. 38=1 L. R. Rev. 107=57 I. C. 184=6 R. D. 126; *Har Singh v. Edan Khan*, IV U. D. 238=6 R. D. 439; *Mohan Lal v. Jangi Singh*, V U. D. 274=1922 R. C. 338=7 R. D. 466; *Zubair Ahmad v. Subrati*, V U. D. 293=4 L. R. Rev. 75=1922 R. C. 440=7 R. D. 483; *Raghbir Dayal v. Sheo Shankar*, IV U. D. 33=12 R. D. 182.

**5. What is the status of the sub-tenant or mortgagee ?**—There can be no doubt that a mortgagee will retain his character and will not be classed as a tenant. A sub-tenant will be classed as a tenant-in-chief,<sup>2</sup> at any rate for the remainder of the term of his lease.<sup>3</sup> The terms of the sub-lease are as binding on the landholder as if it were a lease granted by himself to the sublessee except as to rent. The sublessee is also bound by the terms of his sublease to the head lessor.

Where the conduct of a tenant-in-chief is such as to suggest abandonment of the holding to the detriment of a mortgagee or sublessee, the latter is entitled to the benefit of section 47(3).<sup>4</sup>

Covenants in subleases granted before 1902 are binding for the remainder of the term of the sublease or mortgage, or for the lifetime of the tenant, or for ten years, whichever period may be the shortest.

**6. Sub-section (4).**—This provides for valid subleases made on or after the first of January, 1902, *i. e.*, subleases as authorised by section 25 of Act II of 1901, a sublease for a term not exceeding five years in the case of occupancy and exproprietary tenants, with an interval of two years between two such subleases, and for a term not exceeding one year in the case of non-occupancy tenants, with an interval of three years between two such subleases or as authorised by sections 27 and 29 of the Act of 1926 (section 40 of this Act.)

Section 25(4) of Act II of 1901 recognised long term subleases granted by certain classes of persons, *viz.*, persons in the military service of government, females, minors, lunatics and idiots, as section 41 of this Act does. Sub-section (4) of section 47 limits the duration of such a sub-lease to the shorter of the two periods, *viz.*, term of the sublease or 5 years after the death or cesser of interest ;

To attract sub-section (4), there must be a valid sub-lease. Hence where there is no sublease or it is not valid, the sub-section will not apply. A perpetual lease held by a *sir* cultivator does not become a sublease on the proprietary rights being sold, although the proprietor has become an exproprietary tenant of the *sir*.<sup>1</sup>

Sub-tenants without any lease for fixed terms are sub-tenants from year to year. If the tenant-in-chief surrenders at the end of an agricultural year such sub-tenant's interest must also be deemed to have expired then. Hence, continuance in possession by a sub-tenant after such surrender does not come under sub-section (4). The sub-tenant may be ejected by a new lessee of the zamindar as a sub-tenant or person occupying without consent.<sup>2</sup>

<sup>1</sup> *Inti v. Bilas Kuar*, 5 Rev. and Cr. L. J. 261=III U. D. 580=4 R. D. 360.

<sup>2</sup> *Nunhe Khan v. Huzari Lal*, 2 L. R. Rev. 185=7 Rev. and Cr. L. J. 297=IV U. D. 453=5 R. D. 231 ; *Bhagwan Din v. Abid Husain*, III U. D. 579=9 Rev. and Cr. L. J. 238.

<sup>3</sup> *Nasser Haider v. Badri Singh*, XVIII U. D. 80=1937 R. D. 85.

<sup>4</sup> *Badal v. Aminuddin*, 12 L. R. Rev. 110=15 R. D. 316.

<sup>5</sup> *Lakhi v. Bihari*, XIII U. D. 190=14 L. R. Rev. 77.

7. **By surrender or abandonment**, see under note 4 *ante* at page 912.

8. **Or by death without any heir.**—This overrides, so far as sub-leases after the 31st of December, 1901, are concerned, the decisions under the Act of 1902, that death ended a valid sublease.

A sublessee, becomes, on such death, the tenant-in-chief,<sup>1</sup> but whether statutory or non-occupancy is not clear.

**48.** When the interest of a sub-tenant is extinguished he shall vacate his holding, but shall have Rights and liabilities of sub-tenants on extinction of sub tenancy. in respect of the removal of standing crops and other products of the earth, the same rights as the tenant would have upon ejectment in accordance with the provisions of this Act.

This reproduces section 33 of the Act of 1926, which reproduced section 30 of the Act of 1901. The words "with the extinction of the interest of the tenant from whom he holds or by the expiry of the term of settlement" have been omitted.

*Division, exchange and acquisition of holdings*

**49.** (1) A division of a holding shall be accompanied by a distribution of the rent payable in respect of such holding, and shall be effected only—  
Division of holdings.

(a) by agreement between the co-tenants ; or

(b) by the decree in a suit instituted under this section by one or more of the co-tenants against the other or the others :

Provided that no agreement for the division of a holding and the distribution of the rent thereof shall be binding on the landholder, unless he agrees thereto in writing.

(2) In any suit under this section the landholder shall be made a party.

(3) A suit for the division of more than one holding may be instituted, provided the parties are the same.

1. This corresponds to section 37 of the Act of 1926 and is for many practical purposes the same. Under section 37 there could be a suit for the division of a holding or distribution of the rent payable in respect of a holding or any part thereof or such division and distribution, whereas section 49 imposes the necessity of a distribution of the rent along with the division of the holding. Clauses (a) and (b) to sub-section (1) are the same as before and the proviso reproduces the proviso to section 37 ; sub-sections (2) and (3) are new.

<sup>1</sup> *Mahadeo v. Pargan Singh*, II U. D. 107 ; *Ram Autar v. Drig Bajar Singh*, II U. D. 441.

There is only one decree and not two—preliminary and final.<sup>1</sup>

Sub-section (2) makes necessary the joinder of the landholder to a suit for division or distribution, as was insisted on by the Board of Revenue in reported cases. He may, it is to be presumed, raise an objection to the division.

2. **Tenant**—The section does not apply to *ganwadhars*, who are really not tenants but actual proprietors,<sup>2</sup> or to rent-free grantees,<sup>3</sup> but does apply to holders of groves.<sup>4</sup>

There must, however, be two or more real tenants. One may note *Kashi v. Asharfi Singh*<sup>5</sup> There the sole fixed-rate tenant sold portions of his holding to several persons for building purposes. Building on holdings is not an improvement except in so far as it is covered by the definition of that word sec 3(8). Hence the sales for such purposes were not authorised by law and were contrary to the provisions of section 34 of the Act of 1926 (present section 44), although a fixed-rate tenant could freely transfer his holding as a holding for agricultural purposes. Such transfer exposed the transferor and the transferee to action under section 82 of the Act of 1926 (now section 171). It was, however, argued that the net result was division of the holding which was permissible under section 37 (present section 49). The argument was obviously futile, as the sole tenant had no co-tenant at the date of the first sale, and section 37 predicated at least two co-tenants.

A wife's name entered as occupancy tenant over a part of the husband's holding by way of consolation on his taking a second wife was held to be entered fictitiously, and hence sons from her were held to be co-tenants with the sons from the other wife.<sup>6</sup>

Persons whose names are wrongly recorded as tenants and whose possession is not proved, and it is proved that another person was the real tenant and the holding is his own, cannot claim division.<sup>7</sup> In *Ram Sumer v. Ram Nirangan*,<sup>8</sup> plaintiff was required to prove under the circumstances of the case his co-tenancy.

The best course is to order removal of the name of the person wrongly recorded as he cannot be treated as joint tenant with the other parties.<sup>9</sup>

<sup>1</sup> *Duleshra v. Rupan Rai*, XX U. D. 313=1939 R. D. 23.

<sup>2</sup> *Ram Sunder v. Jadu Nath*, XII U. D. 317=15 R. D. 779.

<sup>3</sup> *Bindeshwari v. Ram Sukh*, XII U. D. 199=12 L. R. Rev. 343=15 R. D. 57, *Gaya Miera v. Ram Manog*, 1937 A. L. J. 943=1937 A. I. R. All. 794=XIX U. D. (H. C) 1=1938 R. D. 20.

<sup>4</sup> *Busant Lal v. Bhagwati Prasad*, 1930 A. L. J. 769=1930 A. I. R. All. 765=1930 R. D. 357.

<sup>5</sup> 1938 A. L. J. 720=1938 A. I. R. All. 511.

<sup>6</sup> *Bhagwan Prasad v. Bindeshwari Prasad*, XX U. D. 187.

<sup>7</sup> *Qadam Singh v. Narain*, 11 L. R. Rev. 262=14 R. D. 591.

<sup>8</sup> XIX U. D. 238=1938 R. D. 670.

<sup>9</sup> *Makhan v. Hargu Lal*, 14 L. R. Rev. 636=XIV U. D. 332.

Where plaintiff is out of possession and has reason to believe that the landlord will oppose his claim he should sue under section 59. If however, he has been recorded as a co-tenant as the result of a proceeding under section 42, Land Revenue Act, to which the landlord was a party, he may proceed under this section for division of the holding.<sup>1</sup>

If a holding has been definitely divided between co-tenant's by agreement, the division is binding and there can be no further partition under the section.<sup>2</sup>

A co-tenant who has got his share divided off and has obtained formal possession is no longer a co-tenant, and his *ciderant* co-tenants' keeping him out of possession exposes them to a suit under section 180.<sup>3</sup>

Where of an ancestral holding, separate portions have been recorded in the names of separate members, a partition among the members may be inferred, and if there is no suggestion that the zamindar did not acquiesce in this, the holding will be held to be legally divided, and it cannot be claimed that the interests of all the tenants survive in the whole of the holding.<sup>4</sup>

Where a recorded co-tenant is not in possession and his right and title is contested on reasonable grounds, he need not establish his right by suit or otherwise before claiming division,<sup>5</sup> but if the zamindar challenges his status, he may sue under section 59.<sup>6</sup>

A person never in possession nor a *de facto* or *de jure* tenant has no right to divide the holding.<sup>7</sup>

Where a co-tenant's name has been consistently recorded during his absence for 40 years, abandonment or surrender of his interest cannot in the absence of proof to that effect be presumed. Hence he may sue.<sup>8</sup>

A mortgage of proprietary rights in favour of one of several joint tenants does not cause merger or prevent him from claiming partition.<sup>9</sup>

A holding acquired by two brothers as tenants in common may be divided at the instance of the descendants of one of them unless their

<sup>1</sup> *Ram Autar v. Ganesh*, XIX U. D. 115=1938 R. D. 282.

<sup>2</sup> *Anant v. Ram Sarup*, XVII U. D. 15=1936 R. D. 30.

<sup>3</sup> *Chittar v. Jhunna*, XIX U. D. 63=1938 R. D. 110.

<sup>4</sup> *Sarju Kumar Mukarji v. Inderjit Singh*, XVIII U. D. 154=1937 R. D. 166, see also *Bandhu Singh v. Changur*, IV U. D. 235.

<sup>5</sup> *Aditya Narain Singh v. Sheo Baran Singh*, XV U. D. 417, *Bhairo Rai v. Murari Lal*, B. R. 5 of 1934=XV U. D. (B. R.) 17=15 L. R. Rev. 505, 668, *Muh. Sabir v. Muh. Yasin*, XII U. D. 54; *Chhattar Dhuri v. Ganesh*, XVIII U. D. 360, *Contra Arjun Singh v. Maharaj Singh*, 12 L. R. Rev. 40=XII U. D. 45=15 R. D. 188.

<sup>6</sup> *Chattar Dhuri v. Ganesh* XVIII U. D. 360=1937 R. D. 584.

<sup>7</sup> *Jupit Kundu v. Situ Ram*, XV U. D. 270.

<sup>8</sup> *Debi Din Ahir v. Bechu* XVII U. D. 231=1936 R. D. 342.

<sup>9</sup> *Tegh Singh v. Harbaksh Singh*, 16 L. R. Rev. 186=XVI U. D. 170.

right is barred by adverse possession ; but if in spite of absence of possession their right has been admitted, *e. g.*, in the settlement entries, there is no adverse possession.<sup>1</sup>

A widow who has inherited her husband's share in an occupancy holding is a tenant entitled to apply for division,<sup>2</sup> but the effect of the division will not survive her death or remarriage.

As a landholder is not bound by any decision under this section unless he agreed to it in writing, he can sue for a declaration that only one of the parties was his tenant.<sup>3</sup>

Though the landholder's consent in writing is necessary to make a decision binding on him, the fact that he has not consented is no reason against a division or distribution as contemplated by the section.<sup>4</sup>

Before partition can be made the shares of the parties should be ascertained, and if that has been done by a competent Civil Court, its finding binds the Revenue Court.<sup>5</sup>

In making a division of holdings, if mortgages exist or are alleged to exist on a part, that part should be allotted to the mortgagor.<sup>6</sup>

A Hindu widow, in possession of her husband's holding in which A, a collateral, had shared in cultivation with the husband, had the holding partitioned. On her death B and C, whom the widow had associated with her in the cultivation, have no right to the holding as against A, as the partition did not enlarge her life estate.<sup>7</sup>

**3. In respect of such holding**—Hence no suit under the section lies for division of a part of a holding.<sup>8</sup> The fact that that part of the holding has become a grove is immaterial.<sup>9</sup>

4. The landholder will not be bound by any division of a holding made by tenants<sup>10</sup> or through the court unless he agrees to it in writing.

<sup>1</sup> *Captan Singh v. Ved Ram Singh*, 14 L. R. Rev. 47=XIV U. D. 23.

<sup>2</sup> *Dropadi v. Mirza*, B R 7 of 1930=XI U. D (B. R.) 18=11 L. R. Rev. 390=15 R. D. 4.

<sup>3</sup> *Ram Sukh v. Dulari*, XIII U. D. 43.

<sup>4</sup> *Jitawar Singh v. Badlu Singh*, 11 L. R. Rev. 226=14 R. D. 500.

<sup>5</sup> *Girwar Singh v. Jurawan Singh*, 13 L. R. Rev. 161.

<sup>6</sup> *Ram Lakhan Singh v. Mahendra Singh*, XIX U. D. 219=1936 B. D. 650.

<sup>7</sup> *Behari v. Muthra*, 1932 A. L. J. 1024=1933 A. I. R. All. 55=XIV U. D. (H C.) 13=13 L. R. Rev. 407=16 R. D. 595.

<sup>8</sup> *Daulat v. Rajjab*, XI U. D. 220=14 L. R. Rev. 112.

<sup>9</sup> *Daulat v. Rajjab*, XI U. D. 220.

<sup>10</sup> *Jitawar Singh v. Badlu Singh*, 11 L. R. Rev. 226.

Without such consent the landholder will be entitled to realise the whole rent from any one of the tenants. Section 49 does not overrule section 39 (2) Land Revenue Act, and hence, as a partition between co-tenants without the landlord's consent does not bind him, he can realise the rent of the whole holding from all the co-tenants and can eject them. It cannot be said that a co-tenant who has divided has no interest in the other portion.<sup>1</sup>

At the same time, he will not be able to eject any one of them without also ejecting the others.<sup>2</sup>

In a case of joint family ancestral holding, the division is to be *per stirpes* and not *per capita*.<sup>3</sup>

It is not necessary to divide each plot, or give equal areas. Each party should get an area corresponding in value to the area to which he is entitled.<sup>4</sup>

5. **Consent of landholder etc.**—The landholder may consent to a division of a holding or a distribution of rent. If there are more landholders than one, all or their common agent must consent. Without the landholder's consent in writing, the division of a holding between the co-tenants thereof is not complete; and hence the landholder whose consent has not been obtained to the division, cannot by consenting to a gift as to one of the parts, introduce a new tenant so as to injure any rights of the tenant of the other part.<sup>5</sup> Before the Act of 1926 the consent might be proved by receipts showing acceptance of portions of rents from the several co-tenants.<sup>6</sup> The fact that the landholder's agent had accepted from the joint tenants proportionate parts of the rent did not bind the landholder in the absence of evidence to connect the landholder with the receipt of any proportionate rates of rent by the agent.<sup>7</sup> The receipts must, however, show that the rent was received as that payable by one of them, and not as a part of the rent payable by all.<sup>8</sup> The mere fact that the receipt was for an amount proportionate to the share of a co-tenant was not sufficient.<sup>9</sup> The test was whether the co-tenants have been dealt with as separate tenants.<sup>10</sup> Now however the consent must be in writing.

<sup>1</sup> *Baru Lal v. Ram Devi*, B. R. 13 of 1930=XII U. D. (B. R.) 3=12 L. R. Rev. 126=15 R. D. 239.

<sup>2</sup> *Partab Narain Singh v. Sulchana*, III U. D. 41=3 Rev. and Cr. L. J. 232=5 R. D. 440.

<sup>3</sup> *Panchu Rai v. Jhagru Rai*, 14 L. R. Rev. 534=XIV U. D. 259.

<sup>4</sup> *Babu Ram v. Dipu*, 14 L. R. Rev. 347=XIV U. D. 449.

<sup>5</sup> *Naujadi v. Muneshwar Ahi*, XX U. D. 232=1939 R. D. 248.

<sup>6</sup> *Pyari Mohan v. Gopal*, 25 Cal. 531, dissenting from *Aubhoy Charan v. Shoshi Bhusan*, 16 Cal. 155.

<sup>7</sup> *Beni Prasad v. Gobardhan*, 6 C. W. N. 823.

<sup>8</sup> *Sri Kishan Prasad v. Jeobasi*, 4 Pat. L. T. 316=45 I. C. 294.

<sup>9</sup> *Gour Mohan v. Ahmad Mundal*, 22 W. R. 295; *Beni Prasad v. Ram Dahin*, 10 C. W. N. 216.

<sup>10</sup> *Lalan Mones v. Sona Mones*, 22 W. R. 334; see also *Janendra Mohan v. Gopalidas*, 31 Cal. 1026.



If the plaintiff dies heirless, his co-tenants if dispossessed by the zamindar may sue under section 183.<sup>1</sup>

When a division of area and rent has been made with the landlord's consent the landlord is bound, and cannot sue to recover the whole original rent from one of his tenants, although the division has not been recorded in the patwari's papers.<sup>2</sup>

Consent of the thekadar in possession if *bona fide* and leading to an enhancement of rent is binding on the owner.<sup>3</sup>

6. **Suit.**—The suit falls in group B, serial No. 1, of the 4th Schedule and lies in the Court of an Assistant Collector of the First Class, and not in a Civil Court, although the plots are uncultivated,<sup>4</sup> with a right of appeal to the commissioner, and is within the exclusive cognisance of a Revenue Court.<sup>5</sup> A private division of a part of a holding is no bar to a subsequent suit for partition of the entire holding.<sup>6</sup> There is no limitation for the suit. Court-fee is chargeable on the rent payable in respect of the part to be separated. A suit for partition of a grove does not lie in a Civil Court and if a claim for damages for wrongful interference with plaintiff's possession is also joined, section 183 will apply and the Civil Court will have no jurisdiction. But if the disturbance took place before 7th September, 1926, a Civil Court could entertain the suit as to compensation only.<sup>7</sup> The landholder is a necessary party.

One suit for the division of a number of holdings situate in more mahals than one was held maintainable.<sup>8</sup> So a suit for division of grove-land situate in several *pattis*.<sup>9</sup> Such a suit must however be between the same parties.

Where a suit under section 49 is dismissed for default under order 9, rule 8, Civil Procedure Code, the remedy is an application under order 9, rule 9 of the Code and not a separate suit, which is barred.<sup>10</sup> If a suit is withdrawn a fresh suit may be brought.<sup>11</sup>

Where in a suit for division the parties came to terms, and the suit was dismissed *bila tajwiz* without embodying the terms of the

<sup>1</sup> *Tota Ram v. Mul Chand*, XVIII U. D. 172=1937 R. D. 206.

<sup>2</sup> *Muhammad Jan v. Gulzari*, XV U. D. (H. C.) 146=14 L. R. Rev. 432.

<sup>3</sup> *Mahomed Nasirul Hasan v. Chuni*, 2 Pat. L. J. 151.

<sup>4</sup> *Chamru v. Bhaggan*, 1930 A. L. J. 303=1930 A. I. R. All. 219=127 I. C. 589=14 R. D. 229.

<sup>5</sup> *Bhagwan Sahai v. Ram Chandar*, 1932 A. L. J. 849=1932 A. I. R. All. 693=16 R. D. 560=XIII U. D. (H. C.) 154.

<sup>6</sup> *Mahadeo v. Jai Karan*, XVI U. D. 535.

<sup>7</sup> *Baranti Lal v. Bhagwati Prasad*, 1930 A. L. J. 769=1930 A. I. R. All. 365=14 R. D. 387.

<sup>8</sup> *Amjad v. Muh. Mustafa*, XVII U. D. 118=1936 R. D. 177.

<sup>9</sup> *Mahadeo v. Jai Karan*, XVI U. D. 535.

<sup>10</sup> *Aghani v. Choont Lal*, 15 L. R. Rev. 59=XV U. D. 63.

<sup>11</sup> *Amjad v. Muhammad Mustafa*, XVII U. D. 118.

compromise in the decree, a fresh snit under the section may be brought.<sup>1</sup>

This section (and not section 59 or 61) provides the proper remedy when two persons, as between themselves and not as against the landholder, claim sharers in a tenancy.<sup>2</sup>

**50.** A landholder may, in agreement with a tenant, give such tenant land, other than land which is let, in exchange for land included in such tenant's holding, and such tenant shall have the same right in the land so received by him in exchange as he had in the land given in exchange.

Rights of tenant in land received in exchange from landholder.

It may be said to correspond to section 38 of the Act of 1926, and provides for exchange of tenancy land with other land of the landholder, which is not let. The land in the holding given by a tenant in exchange may be sub-let validly according to the Act. But what, if the sub-letting was in contravention of the provisions of this Act? The tenant will have the same rights over the land so received in exchange as he had in the land which he has given to the landholder. Such exchange has to be by agreement between the two.

**51.** (1) Tenants of the same class may agree to exchange land which they hold from the same landlord, under-proprietor, permanent lessee or permanent tenure-holder with his written consent, or which they hold from different landlords, under-proprietors, permanent lessees or permanent tenure-holders with the written consent of all such persons.

(2) On exchange the tenants shall have the same rights in the land received in exchange as they had in the land given in exchange.

1. The section corresponds to section 39 of the Act of 1926 but is in the main entirely new.

2. The section is confined to tenants, and to tenants of one and the same class. The classes of tenants are mentioned in section 21. Tenants of one class, *e. g.*, exproprietary tenants, cannot exchange with tenants of another class, *e. g.*, occupancy tenants, even with the written consent of the landlord or landlords. A mere landholder who is not a landlord, under-proprietor, permanent lessee or permanent tenure-holder cannot consent.

**52.** Persons who have exchanged land under the provisions of sub-section (2) of section 9, or of section 10, or of section 50 or of section 51 may apply to the assistant collector incharge of the

Entry of exchange in record of rights.

<sup>1</sup> *Nain Sukh v. Sukhi*, 1938 A. L. J. (B. R.) 125—XX U. D. 118—1938 R. D. 849.

<sup>2</sup> *Anmol v. Ram Lal*, XVII U. D. 258—1936 R. D. 371.

sub-division to have the appropriate entry made in the record of rights.

This is new and provides for correction of records on the happening of exchanges under the sections mentioned, i. e., 9 (2), 10, 50 and 51.

The application is in Group D, No. 3 of the Fourth Schedule and pays court-fee on the amount of rent payable for the more highly rented of the two pieces of land exchanged. For this purpose the rent of *sir* shall be the valuation of such land at the rates applicable to hereditary tenants.

**53.** (1) A person who wishes to consolidate the area which he cultivates or to build a house or to obtain land to increase the amenities of his house may apply to the assistant collector in charge of the sub-division to exchange the whole or any portion of the land which he cultivates for land cultivated by another person.

(2) On receipt of an application under the provisions of sub-section (1) the assistant collector shall, if he is satisfied that reasonable grounds exist, grant such application either in whole or in part, and shall allot, to such other person, land which is cultivated by the applicant and which is approximately equal in value to the land received by the applicant.

(3) After orders have been passed under the provisions of sub-section (2) each person shall have in respect of the land which he receives in exchange the same right as he had in the land which he gives in exchange, and the assistant collector shall order that the appropriate entry be made in the record of rights.

(4) No order shall be passed under the provisions of this section—

(a) in respect of land cultivated by a non-occupancy tenant, or

(b) for exchange of land between persons unless they are landlords or are under-proprietors, permanent lessees or tenants of the same landholder or stand to one another in the relation of landholder and under-proprietor, permanent lessee or tenant.

(5) A landholder, who is not a party to the exchange, may file an objection and the court shall consider such objection before passing orders on the application.

(6) Notwithstanding anything in any law for the time being in force if the land allotted in exchange for other land is burdened with any lease, mortgage or other encumbrance, such lease, mortgage or other encumbrance shall be transferred and shall attach to such other land or to such part of such other land as may be specified by the assistant collector and thereupon the

lessee, mortgagee or other encumbrancer shall cease to have any right in or against the land from which the lease, mortgage or other encumbrance was transferred.

1. **A person**—will include both landholders or landlords and tenants. Sub-section (1) is not a glaring example of lucidity or draftman's skill. Reading it as a whole, it seems that the applicant must be cultivating the land which he wishes to give in exchange. One of three objects must be averred in his application, *viz.*, (i) to consolidate the holding, or (ii) to build a house, or (iii) to obtain land to increase the amenities of his house.

2. The house in (iii) need not be on the cultivated land which he wishes to give in exchange, nor is it necessary that the house to be built in (ii) should be expressed to be built on such land.

What about the Consolidation of Holdings Act?

3. **Who wishes to consolidate the area which he cultivates.**—Consolidation of areas more or less scattered about is one of the reasons for an application under the section. The area to be consolidated must be one which the applicant cultivates personally and not vicariously through persons other than his servants or labourers. The land to be given in exchange may be *sir*. If the object is to consolidate an area, this section will apply. If there is any other object, and the person with whom the exchange is sought is the applicant's tenant, section 10 will apply.

4. **Or to build a house or obtain land to increase the amenities of his house.** Building of a new house, and increasing the amenities of the applicant's existing house are two other reasons for exchange. *Amenities* mean pleasant scenes, ways, and would probably include a courtyard, a pathway or road to the house and perhaps to a limited extent the prospects of the house. To let loose a wide expression like this in a serious enactment intended to fix exact relations between the persons concerned is hardly fair to the public. A well-to-do landlord may be fond of keeping motors or of having as wide a prospect to his house as he possibly can. As the section stands there is nothing, except the discretion of the Assistant Collector in charge of the sub-division, to prevent him from acquiring a very large cultivated area to improve the prospects of his house or to construct a motor road opening on to a public road.

5. **Apply to the Assistant Collector.**—The application is No. 4 of Group D of the 4th Schedule. There is no limitation for it. The court-fee will be levied on the amount of rent payable for the more highly rented of the two pieces of land exchanged. For this purpose the rent of *sir* shall be the valuation of such land at the rates applicable to hereditary tenants.

6. **To exchange...the land which he cultivates.**—The land proposed to be given in exchange for another's land must be in the cultivation of the applicant. See note 3 *supra*. Whichever of the three reasons mentioned in sub-section (1) is the basis of the application, the

land to be given in exchange must be in the cultivation of the applicant and not barren, *usar* or *khanjar* or uncultivated land.

7. **For land cultivated by another person.**—The land to be taken in exchange must be in the cultivation of the other person who may be a tenant or a landholder, landlord, under proprietor, etc.

8. **Sub-section (2).**—The Assistant Collector has to judge of the sufficiency of the reason alleged. The land to be given in exchange must be approximately equal in value to the land received by the applicant in exchange; substantial money compensation to equalise values is not contemplated. To make the section workable, a small amount of money may have to change hands to make the values equal.

9. **Sub-section (4).**—Land cultivated by a non-occupancy tenant cannot be received in exchange by the applicant or be given in exchange by such tenant.

The persons between whom exchange is permissible are (i) landlords, (ii) under-proprietors, (iii) permanent lessees, (iv) tenants of one and the same landholder, which may include two sub-tenants, (v) landholders, which would include two tenants-in-chief, and (vi) persons who stand to one another in the relation of landholder and under-proprietor, permanent lessee, or tenant, which would include a tenant-in-chief and his sub-tenant.

What was the exact or precise relation intended by the words “stand to one another in the relation of landholder and under-proprietor, permanent lessee or tenant” is clear only to the framers of the section. To an outsider the words convey no precise information. Perhaps they mean relation of under-proprietor, permanent lessee or tenant on the one hand and landholder on the other.

Even so, the phraseology is not very lucid.

10. **Sub-section (6) Notwithstanding, etc.**—This ignores the legal rights of lessees, mortgagees and other encumbrancers. The burdened land will go to the other persons freed from the burden, which will attach itself, *ipso facto*, to the land received in exchange. This will open wide several doors to defraud mortgagees, incumbrancers and lessees.

**54. (1)** A landlord or an under-proprietor may apply to the collector to acquire for him land which is held—

Acquisition of land  
by landlord or under-  
proprietor.

(a) by an occupancy or a hereditary tenant if such land is situated within the limits of any municipality, cantonment or notified area and is required for building purposes, or

(b) by a hereditary tenant if such land is required by him for a house for his own residence or a garden or a grove for his own enjoyment.

(2) The collector shall, in accordance with rules made by the Board, order the acquisition of, and the ejection of the tenant from the land applied for, or from part thereof, and shall award to the tenant the compensation to which he may be entitled under the provisions of sub-section (3) :

Provided that in a case to which the provisions of clause (b) of sub-section (1) apply, the collector shall not pass an order—

(a) for the acquisition of an area exceeding five acres or, if the applicant possesses a house, a garden or a grove in the village, for the acquisition of any land the area of which together with the area occupied by such house, garden or grove exceeds five acres, or

(b) for the acquisition of any land if the applicant can obtain suitable land by exchange under the provisions of section 53.

(3) The compensation which shall be awarded in the case of an occupancy tenant shall be ten times the valuation of the land acquired at the rates applicable to hereditary tenants under the provisions of Chapter VI, and, in the case of a hereditary tenant six times such valuation, in addition to compensation on account of improvements, if any, made by the tenant calculated in accordance with the provisions of section 75 and any compensation that the court may award on account of trees.

(4) If a tenant is ejected from a portion only of his holding under the provisions of this section, the collector shall determine the rent payable by him on account of the remainder.

(5) If within three years of the date of the order passed by the collector under the provisions of sub-section (2), the land is not used for the purpose for which it was acquired, the collector shall, on the application of the tenant, order that the land be restored to him without the payment of any compensation.

This is somewhat on the lines of section 30-A of the Oudh Act and sections 40 *et seq* of the Agra Act ; and is confined to the acquisition by landlords and underproprietors of lands for the purposes specified in clauses (a) and (b) of sub-section (1). Under cl. (a) the land to be acquired should be of an occupancy or hereditary tenant which is situate within the limits of any municipality, cantonment or notified area, the purpose of the acquisition being building. Under cl. (b) the applicant may acquire land for building a house for his own residence or planting a garden or a grove for his own enjoyment. The maximum area to be acquired by him shall not exceed 5 acres, less such area as is already occupied by his existing house, garden or grove, if any. If he can obtain suitable land by exchange under section 53, no acquisition will be allowed to him under cl. (b).

Sub-section (3) fixes the measure of compensation payable for an acquisition under the section.

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## CHAPTER V

### GENERAL PROVISIONS RELATING TO TENANCIES

#### *Leases and right to measure land*

**55.** (1) On admission to a holding the tenant is entitled to receive from his landholder a written lease consistent with the provisions of this Act and the landholder upon delivering or tendering to a tenant such a lease is entitled to receive from him a counterpart thereof.

Right to written leases and counterparts.

(2) Such lease or counterpart shall contain in addition to the name and description of the landholder and of the tenant the following particulars, namely :—

- (a) the class to which the tenant belongs ;
- (b) the area, numbered plots or boundaries of the holding ;
- (c) the rent payable in respect of the holding, and whether a fixed rent is payable in cash or whether rent is payable by division of the produce or is based on an appraisalment or estimate of the standing crop or varies with the crop sown ;
- (d) the dates on which and the instalments in which the rent is payable ;
- (e) in the case of rent payable in kind, the time, place and manner of appraisalment, division or delivery of the crops ;
- (f) in the case of a non-occupancy tenant the term for which the tenancy is to run ; and
- (g) any special conditions not inconsistent with the provisions of this Act.

(3) Such lease or counterpart may be in the form given in the Third Schedule.

(4) If the lease or counterpart is not received by the person entitled to receive it under the provisions of sub-section (1), he may bring a suit for such lease or counterpart, as the case may be.

The section reproduces in effect section 125 of the Act of 1926. Sections 8 to 11 of the Oudh Act related to the same. Sub-section (2) reproduces largely the clauses (a) to (f) of section 123 of the Act of 1926.

Section 125 corresponded to section 96 of the Act of 1901, which in its turn corresponded to sections 24, 27, 28 of the Acts of 1873 and 1881, and sections 8, 9 of Act X of 1859.

**Landholder**—see section 3(11), **tenant**—see section 3(23) for meaning.

**Suit.**—A suit under section 55 is in item 2 of Group B of the Fourth Schedule. The plaintiff pays a court-fee of eight annas. There is no limitation for the suit. It is triable by an Assistant Collector of the First Class with a right of appeal to the Commissioner. In Oudh the suit was No. 1 and No. 7 of the Oudh Act. It lay in the Court of the Assistant Collector of the Second Class, if the value did not exceed Rs. 100, with a right of appeal to the Collector and in the Court of the Assistant Collector of the First Class when the value exceeded that sum, with an appeal to the Commissioner. When the suit was tried by the Collector an appeal lay to the Commissioner on a point of law only, and no further appeal lay.

No suit lay unless the parties had come to an agreement about the land to be specified in the lease or counterpart.<sup>1</sup>

It was held that a landlord could in a suit for *kabuliat* or counterpart have the validity or otherwise of an alleged relinquishment determined.<sup>2</sup>

In a suit for a lease the plaintiff had to prove that he was in possession.<sup>3</sup> In any case the relation of landholder and tenant had to be established or admitted.

**56.** A lease for a period exceeding one year or from year to year shall be made by a registered instrument only.

The section corresponds to section 126 of the Act of 1926, substituting "one year or from year to year" for "exceeding five years" and renders a registered instrument compulsory. In Oudh, section 156 removed the necessity of registering a *patta* granted for any period not exceeding ten years.

A lease without any definite term was held to be a lease from year to year and will require registration now, though it was held not so under the Oudh Act.<sup>4</sup>

One judge also opined that a lease of *khar* (grass or straw) which grows spontaneously was one for an agriculture purpose within the meaning of section 117, T. P. A., and did not require a deed for its creation or registration.<sup>5</sup>

It was also held in Oudh that a lease for a term not exceeding ten years was valid even if unregistered.<sup>6</sup>

<sup>1</sup> *Ajudhia Estate v. Mahabir*, III U. D. 533

<sup>2</sup> *Mahabir Singh v. Sheorani*, II U. D. 215.

<sup>3</sup> *Jaaki Prasad v. Ram Singh*, B. R. 5 of 1885

<sup>4</sup> *Narain Singh v. Jagatjit Singh*, XVI U. D. 80.

<sup>5</sup> *Ambika Prasad v. Beni Madh*, 1929 A. I. R. Oudh 529=XI U. D. (H. C.) 222.

<sup>6</sup> *Kapurthala Estate v. Shri Ram Narain*, XVIII U. D. (H. C.) 107, 1937 R. D. 209.



These decisions are not of much use under the Act, but may be of help for some time to come.

57. (1) When under the provisions of this Act or the Indian Registration Act, 1908, or any other enactment for the time being in force any lease, counterpart, grant or agreement is required to be made by registered instrument, and such lease, counterpart, grant or agreement—

Attestation in lieu of registration.

(a) is with respect to land held by a grove-holder as such, or to land let or granted for the purpose of planting a grove, or

(b) relates to a tenancy and stipulates for rent not exceeding one hundred rupees annually,

the parties to such lease, counterpart, grant or agreement may, in lieu of registering the same, obtain the attestation thereto of a revenue court or of a revenue officer not inferior in rank to a qanungo or such other person as the Provincial Government may, by general or special order in this behalf, appoint and subject to such conditions, if any, as the Provincial Government may, by rules made under this Act, direct.

(2) Such court, officer or other person shall, after satisfying himself as to the identity of the parties and their acquaintance with, and assent to, the terms of the lease, counterpart, grant or agreement, make, sign and date an endorsement thereon to the effect that he has so satisfied himself.

(3) No such instrument shall be accepted for attestation under this section unless presented within the period prescribed for presentation for registration under Part IV of the Indian Registration Act, 1908.

The section reproduces section 127 of the Act of 1926, dropping sub-section (4).

Sub-sections (1) and (2) of the Act of 1926 were identical with sub-sections (1) and (2) of section 97 of Act II of 1901, except that the word *grant* and clause (a) to sub-section (1) had been added. Sub-section (3) was new and gave effect to the rulings cited in the footnote.<sup>1</sup>

Section 97 of Act II of 1901 corresponded to section 12 (a) of the Acts of 1881 and 1873 in so far as the latter spoke of recording a written agreement before a qanungo.

Leases for not more than 5 years and at rental not exceeding Rs. 50 did not require registration under Government notification No. 1048-VII—2-34, dated 3rd December, 1885.<sup>2</sup>

<sup>1</sup> *Moti v. Collector of Bulandshahr*, V U. D. 65 ; *Muhammad Imtiaz Ali Khan v. Kallu*, B. R. 13 of 1919=III U. D. 705 ; *Naubat v. Brijraj Saran*, I U. D. 417.

<sup>2</sup> *Pairam v. Gokul Prasad*, 9 L. R. Rev. 15=IX U. D. 14=1927 R. O. 424.

1. **Sub-section (1), Under the provisions of this Act—***e. g.*, sub-leases for a term exceeding one year, or from year to year,<sup>1</sup> or a lease for a term exceeding 1 year or from year to year.<sup>2</sup>

2. **The Indian Registration Act.**—Section 17(a) of that Act only makes compulsory registration of a written lease for a term exceeding one year or from year to year, or reserving a yearly rent. It does not *per se* require any instrument, registered or otherwise, to be made for creating a tenancy. Taken literally, this part of the section is meaningless; but what it probably was meant to convey was that where a written lease is compulsorily registrable under the Registration Act, the provisions of section 57 may be resorted to. As a lease for a year executed after 7th September, 1926, created a life-tenancy under section 10 of the Act of 1926, it needed registration under the Registration Act.<sup>3</sup> This will hold true now, for such a lease will create a hereditary tenancy.

3. **Or any other enactment.**—*e. g.*, the Transfer of Property Act, section 107.

4. The position at present is that an ordinary lease for a period not exceeding 1 year need not be in writing. Since a *theka* has to be by a written instrument,<sup>4</sup> it has to be registered under section 17(d), Registration Act, or attested under this section, if it falls under section 57, 1(b). A lease or agreement with respect to land held by a groveholder as such or land let or granted for the purpose of planting a grove must be by an instrument registered under Registration Act or attested under section 57.<sup>5</sup> A lease or agreement stipulating an yearly rent exceeding Rs. 100 has to be registered under the Registration Act.<sup>6</sup>

A lease or agreement with a rental not exceeding Rs. 100 may be attested under this section, but if the rental exceeds Rs. 100, it must be registered under the Indian Registration Act. A lease for any term not exceeding 1 year with a rental not exceeding Rs. 100 must be either registered or attested, but if the rental exceeds Rs. 100, and the lease is in writing it has to be registered under the Registration Act.

5. **Clause (a).**—The second part of the clause is clear, but the first part “with respect to land held by a groveholder as such” is obscure. It is not likely that a groveholder, on 7th September, 1926, or on the date of the commencement of this Act, would execute subsequently a lease or other document respecting it, so as to bring in clause (a), but if he

<sup>1</sup> Section 42.

<sup>2</sup> Section 56

<sup>3</sup> *Gulzar Singh v Umashankar*, XI U. D. 40=14 R. D. 170; *Durga Debiji v. Badri Prasad*, XII U. D. 89=15 R. D. 399. *Contra*, *Kali Prasad v. Ram Chandra Singh*, B R 10 of 1932=13 L. R. Rev. 387=XIII U. D. B. R. 93; *Jawahir Singh v. Fateh*, 14 L. R. Rev. 381=XIV U. D. 469.

<sup>4</sup> Section 210.

<sup>5</sup> Section 55 (1) (a)

<sup>6</sup> Section 57 (1) (b).

planted a grove after 7th September, 1926 or the date of the commencement of this Act and the landholder granted him a lease thereof, or he executed a *kabuliat* as to it, clause (a) will apply. It is possible that in respect of a groveholder, on 7th September, 1926, or the commencement of this Act the parties may clarify their position by means of an agreement, in which case clause (a) will apply.

6. **Clause (b).** Attestation may now be had in respect of a tenancy irrespective of its term of duration. Under the Agra Act of 1926 it could not be had for a term exceeding 10 years and registration was necessary. Rulings to this effect are now no longer law. It was held that a lease for life may exceed 10 years and therefore required registration (and not attestation), if clause (b) was satisfied<sup>1</sup>. A lease which might continue for an indefinite period but which may not last one year was a lease that did not require registration.<sup>2</sup> The two rulings were hardly consistent with each other.

A lease for 12 years required registration under the Registration Act, and was not admissible in evidence if not registered and was moreover invalid if its object was fraudulent.<sup>3</sup> So a written perpetual lease of *sir* was not admissible if not registered.<sup>4</sup>

An agreement for enhancement of rent was valid for 10 years under Act II of 1901. Hence if during the currency of that Act a tenant executed an agreement for enhancement without specifying any period or term attestation under section 97(1) thereof before the supervisor *kanungo* was sufficient.<sup>5</sup>

7. **One hundred rupees.**—A landholder may let his land in two separate parcels for less than Rs. 100 each,<sup>6</sup> but if there is one agreement to let the two parcels at one lump sum exceeding Rs. 100 he cannot split the rent into two of less than 100 each. Such an action will invalidate the lease or *kabuliat*.<sup>7</sup> The test is whether the real intention was to create a separate holding under each lease or to create or keep one holding under all the leases. An agreement for enhancement of rent to a figure less

<sup>1</sup> *Jasoda Nandan v. Ram Kuar*, 1922 R. C. 220—V U. D. 209—3 L. R. Rev. 637—8 R. and Cr. L. J. 30—9 R. and Cr. L. J. 30—4 U. P. L. R. (B. R.) 48—7 R. D. 411.

<sup>2</sup> *Maha Narain v. Jadubir Singh*, IX U. D. 24—9 L. R. Rev. 31—1927 R. C. 464.

<sup>3</sup> *Sher Singh v. Banwari Singh*, 12 L. R. Rev. 14—XII U. D. 168.

<sup>4</sup> *Ram Prasad v. Chauthi*, 12 L. R. Rev. 93—15 R. D. 278.

<sup>5</sup> *Chab Narain v. Lachhan*, XV U. D. 145—15 L. R. Rev. 223.

<sup>6</sup> *Moti v. Collector of Bulandshahar*, V U. D. 65—3 L. R. Rev. 215—1922 R. C. 237—4 U. P. L. R. (B. R.) 102—7 R. D. 130; *Raghbir Kuar v. Jagram*, III U. D. 486—4 R. D. 292; *Ramji Lal v. Chab Lal*, 26 A. W. N. 81.

<sup>7</sup> *Raghbir Kuar v. Jagram*, III U. D. 486; *Shahabul Hasan v. Baz Khan*, 5 L. R. Rev. 245—VI U. D. 204—1924 R. C. 291—8 R. D. 197; *Kuran Singh v. Ram Prasad*, VII U. D. 199—7 L. R. Rev. 333—1926 R. C. 401—10 R. D. 537; *Chunni v. Torwani Kuar*, 9 L. R. Rev. 291—IX U. D. 100—12 R. D. 706. But not so in the case of a mortgage, *Sital Singh v. Katwaru Lal*, XII U. D. 81—12 L. R. Rev. 167.

than Rs. 100 may be attested.<sup>1</sup> But if the enhanced rent exceeds Rs. 100, section 57 does not apply.<sup>2</sup>

8. **Execution and attestation by witnesses.**—A *kabuliat* need not be signed by the landholder, nor a patta by the tenant.<sup>3</sup> A three years' *kabuliat* need not be attested by witnesses,<sup>4</sup> nor a lease.<sup>5</sup>

9. **Attestation under sub-section (1).**—A Deputy Collector working in an executive capacity may attest.<sup>6</sup> It need not be in any particular form.<sup>7</sup> If the document is presented within 4 months (the time under the Registration Act), attestation may be after that period.<sup>8</sup>

10. **Sub-section (2).**—There must be an endorsement as required by the sub-section made at the time of attestation.<sup>9</sup> See *Badri Prasad v. Neta*,<sup>10</sup> as to the sufficiency of an endorsement, also *Har Dayal Singh v. Mahabir Prasad Singh*.<sup>11</sup>

11. **Proof of lease.**—A patwari's entry coupled with the kanungo's diary and the patwari's order-book may prove a lease.<sup>12</sup>

12. **Effect of valid attestation and endorsement.**—It has the same effect as registration and gives priority over a registered instrument registered later.<sup>13</sup>

13. **Compromises in court.**—The Local Government had under section 23 of the Act of 1901, by Notification No.  $\frac{1925}{1-203 F.}$  dated the 19th May, 1902 (Gazette, dated 24th May, 1902, page 327), Rule 146 of the Revenue Court Manual, prescribed that where in any case pending before a Revenue Court, a compromise is arrived at providing for the rent to be paid in respect of a holding or the period for which a holding is to be held, and an agreement is filed embodying the terms of the compromise, the Court shall "provided that the agreement is properly stamped and is for a term not exceeding ten years and stipulates for rent not exceeding Rs. 100 attest the same", and "except as provided above, no Revenue Court shall ordinarily attest a lease or agreement unless the parties thereto appear before it, accompanied by the patwari within whose circle the land which is the subject of the lease or agreement is situate, and

<sup>1</sup> *Sahodra v. Hari Singh*, 1927 A. I. R. All 106=7 L. R. Rev. 413=98 I. C. 503 (A)=VII U. D. (H. C.) 235=1926 R. C. 518=10 R. D. 330.

<sup>2</sup> *Dhanpat Rai v. Puran*, 1928 A. I. R. All 352=26 A. L. J. 455=9 L. R. Rev. 157=IX U. D. (H. C.) 167=1928 R. C. 33=109 I. C. 793=12 R. D. 125=1926 R. C. 518=12 R. D. 125, relying on *Dat Prasad v. Gopal Ram*, 14 A. L. J. 57.

<sup>3</sup> *Badri Prasad v. Neta*, III U. D. 417=5 R. and Cr. L. J. 275=1 L. R. Rev. 7.

<sup>4</sup> *Kali Charan v. Sidh Narain Singh*, II U. D. 333.

<sup>5</sup> *Jaggu v. Niaz Ahmad*, 10 Rev. and Cr. L. J. 388=VI U. D. 233=5 L. R. Rev. 295=1924 R. C. 415=8 R. D. 215.

<sup>6</sup> *Jigumuth Prasad v. Indra Bikram Singh*, V U. D. 466=4 L. R. Rev. 237=9 Rev. and Cr. L. J. 251=1923 R. C. 145=7 R. D. 62.

<sup>7</sup> *Sahodra v. Hari Singh*, 1927 A. I. All. 106=7 L. R. Rev. 413=98 I. C. 503 (A)=1926 R. C. 518.

<sup>8</sup> *Muhammad Habibur Rahman v. Dharam Singh*, VII U. D. (H. C.) 237=7 L. R. Rev. 415=98 I. C. 521=1926 R. C. 520=10 R. D. 388.

<sup>9</sup> *Ellen v. Commissioner of Bireilly*, II U. D. 445=2 Rev. and Cr. L. J. 223.

<sup>10</sup> III U. D. 417=1 L. R. Rev. 7=4 R. D. 232.

<sup>11</sup> 8 L. R. Rev. 156=VIII U. D. 7.

<sup>12</sup> *Muhammad Jan v. Hansa*, 3 Rev. and Cr. L. J. 120=II U. D. 644.

<sup>13</sup> *Banwari Lal v. Khubi Ram*, 37 All. 59=12 A. L. J. 1265=26 I. O. 458.

present an application for the attestation thereof." According to a Privy Council ruling, no stamp is required for a compromise filed in Court. A compromise in a suit filed in and acted upon by the Court and embodied in the decree, creating a long term, life, or permanent tenancy, does not require registration.<sup>1</sup>

If on a compromise enhancing rent being filed in an ejectment suit the court does not pass a decree in terms of it, contenting itself with merely dismissing the suit, and the court (Assistant Collector) endorses the compromise without satisfying itself as to the particulars required by this section, the section is inapplicable and the compromise is not admissible in evidence, as unregistered.<sup>2</sup> The reason is that if the enhanced rent exceeds Rs. 100, cl. (b) does not apply. In *Kanhaya v. Radha Kishan*<sup>3</sup> a compromise in a similar suit enhancing the rent and granting a lease for ten years endorsed by the court and acted upon by the parties was held to be a registered lease for 10 years within the meaning of section 11 of the Act of 1901.

An unregistered compromise filed in court to be binding must relate to the subject-matter of the suit and be embodied in the decree or order of the court.<sup>4</sup> If it is substantially so embodied it is binding though unregistered.<sup>5</sup>

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<sup>1</sup> *Bindeshri Singh v. Kallu*, II U. D. 117=3 R. D. 27; *Moti Chand v. Sultan*, I U. D. 136; *Rudhabai v. Din Dayal*, III U. D. 242=4 R. and Cr. L. J. 260=4 R. D. 73; *Muh. Ashgar v. Muh. Husain*, III U. D. 299=4 R. D. 122; *Qamar-un-nissa v. Sheo Mangal*, IV U. D. 576=5 R. D. 339, *Cheda Singh v. Bhajan*, IV U. D. 674=3 L. R. Rev. 162=5 R. D. 79. But see *Jugar Nath v. Parsidh Narain*, II U. D. 5.

<sup>2</sup> *Aisha v. Ram Tahal*, VI U. D. 352=6 L. R. Rev. 23=1925 R. C. 40=8 R. D. 258; *Dat Prasad v. Gopal Ram*, 14 A. L. J. 57, followed in *Dhanpat Rai v. Puran*, 26 A. L. J. 455=IX U. D. (H. C.) 167; *Har Sarup v. Tohfa Singh*, 10 L. R. Rev. 69=X U. D. (H. C.) 63=12 R. D. 590.

<sup>3</sup> 3 Rev. and Cr. L. J. 254=II U. D. 576.

<sup>4</sup> *Nur Ahmad v. Raghubar Dayal*, VI U. D. 242=5 L. R. Rev. 302=1925 R. C. 468=11 R. and Cr. L. J. 2=8 R. D. 224; *Mukta Prasad v. Moji Lal*, B R. 8 of 1920=IV U. D. xii=3 L. R. Rev. 315=7 R. and Cr. L. J. 345=3 U. P. L. R. (B. R.) 16; *Suram v. Kashi*, IV U. D. 344=6 R. D. 357; *Musai v. Suraj Rai*, 5 L. R. Rev. 173=10 R. and Cr. L. J. 214=1924 R. C. 224=8 R. D. 440; *Badri Narayan v. Nand Bahadur*, VI U. D. 56=5 L. R. Rev. 100=1924 R. C. 82=10 R. and Cr. L. J. 132=8 R. D. 129; *Sri Radha Krishnaji v. Duniya Prasad*, 1922 R. C. 62=V. U. D. 62=3 L. R. Rev. 139=7 R. D. 144; *Bhupal v. Dwarka Dasji*, V U. D. 244=3 L. R. Rev. 497=9 R. and Cr. L. J. 42=1922 R. C. 470=7 R. D. 438; *Aisha Khanum v. Ram Tahal*, VI U. D. 352=6 L. R. Rev. 23=1925 R. C. 40=8 R. D. 258; *Isk Narain v. Ram Sakai*, VII U. D. 96=7 L. R. Rev. 124=1926 R. C. 127=10 R. D. 451.

<sup>5</sup> *Naunita v. Girdhari Lal*, V U. D. 258=3 L. R. Rev. 527=1922 R. C. 532=9 R. and Cr. L. J. 17=7 R. D. 451; *Ram Kishan v. Janaki*, VI U. D. 447=7 L. R. Rev. 184=1927 R. C. 157=9 R. D. 36; *Nyja v. Sita Ram*, VI U. D. 389=6 L. R. Rev. 78=1925 R. C. 183=8 R. D. 291; *Debi Saran v. Maharajpat*, VI U. D. 227=7 L. R. Rev. 380=1926 R. C. 470=10 R. D. 285.

A compromise in an ejectment suit under which the rent was enhanced as a consideration for raising the status of the tenant to that of an occupancy tenant was not registered but was embodied in the decree. It is not admissible in evidence as to the increased rent as it did not relate to the subject-matter of the suit and was not registered but is evidence of the fact that the defendant was recognised as an occupancy tenant, and outside evidence of the increased rent may be given.<sup>1</sup> Considering that the enhancement was consideration for the immunity from ejectment, the decision on this point does not commend itself.

Where a compromise which required registration or attestation was acted upon by the parties, it was given effect to.<sup>2</sup>

So a compromise in an enhancement proceeding fixing the rent and rendering it not liable to increase in the future in the ordinary cases is binding.<sup>3</sup>

In the compromise of an ejectment suit terms as to rent, etc., cannot be embodied in the decree.<sup>4</sup>

A compromise to require registration must grant or create a right. A compromise stating that occupancy rights have accrued already does not require registration.<sup>5</sup> A compromise filed in a mutation case where the court merely orders mutation in terms of it requires registration.<sup>6</sup> A compromise unregistered and unstamped is not admissible in evidence in a subsequent suit unless it is such as could be embodied in the decree or order of the court.<sup>7</sup>

If a compromise in an ejectment suit conferring occupancy rights on a party though not embodied in the court's decree or registered has been in operation for 12 years, it must be deemed to remain in full effect, as the zamindar has enjoyed the consideration of the compromise for so long, and the judgment on which the compromise was based operates as *res judicata*.<sup>8</sup>

<sup>1</sup> *Gomti v. Baij Nath*, 10 Rev. and Cr. L. J. 44=4 L. R. Rev. 421=V U. D. 602=1923 R. C. 353=7 R. D. 392, see also *Udit v. Hardeo*, VII U. D. 99=7 L. R. Rev. 120=1926 R. C. 225=12 R. and Cr. L. J. 131=5 R. D. 455.

<sup>2</sup> *Hira Lal v. Badri Prasad*, X U. D. 64=10 L. R. Rev. 256=13 R. D. 430; *Ketha v. Ram Prasad*, B. R. 6 of 1927=IX U. D. (B. R.) 17=VIII U. D. 133=8 L. R. Rev. 365=1927 R. C. 420=9 R. D. 17; *Subedar Singh v. Mithi Lal*, 15 L. R. Rev. 97=XV U. D. 73; *Khalilul Rahman v. Mahabir Rai*, XV U. D. 216=15 L. R. Rev. 341=18 R. D. 264.

<sup>3</sup> *Raj Kishore v. Parsadh Singh*, V U. D. 397=1922 R. C. 541.

<sup>4</sup> *Bindeshri Saran v. Ram Bharos*, IV U. D. 267=6 R. D. 468.

<sup>5</sup> *Shankar v. Nageshar*, 7 L. R. Rev. 1=12 Rev. and Cr. L. J. 41=VII U. D. 49=1925 R. C. 540=10 R. D. 136.

<sup>6</sup> *Kuber Nath v. Shyam Lal*, VII U. D. 116=7 L. R. Rev. 146=12 Rev. and Cr. L. J. 154=1926 R. C. 187=10 R. D. 471.

<sup>7</sup> *Zuhuran v. Bechu*, 6 L. R. Rev. 17=VI U. D. 328=1925 R. C. 38=1924 R. C. 512=9 R. D. 265

<sup>8</sup> *Atma Ram v. Chandu Lal*, 13 L. R. Rev. 172=XIII U. D. 110.

Where one of the brothers, tenants of a holding, was in Rangoon, and the others compromised a suit for ejectment on the ground of illegal subletting of a part by surrender of the part illegally sublet, and considerable increase of rent on the rest, the absent brother is bound by the compromise even so far as it relates to increase of the rent.<sup>1</sup>

A compromise filed in a suit being part of a public record can be proved by producing a certified copy without producing the original.<sup>2</sup>

The notification does not and could not touch the power of a Revenue Officer not below the rank of a kanungo to attest a lease or agreement ; and does not empower any other person to attest. The rules for attestation by supervisor kanungos are<sup>3</sup> :—

1. The endorsement shall be as nearly as may be in the following form :—

This lease (or counterpart of agreement) was presented before me by the parties specified below. I have satisfied myself of their identity, and that they are acquainted with and assent to its terms.

(1)—(name), son of—(name), caste—, resident of—, who is personally known to me (or who is identified by—, son of—, caste—, resident of—, who is personally known to me).

(2)—, son of—, caste—, resident of—, who is personally known to me (or who is identified by—, son of—, caste—, resident of—, who is personally known to me).

Date— — —

*Signature.*

2. On attesting any document under the preceding rule the supervisor shall note in his diary the nature of the document and the names and description of the parties.

3. If the supervisor is not satisfied of the identity of all the parties, or that they are acquainted with and understand its terms, he shall refuse to attest it, and shall enter in his diary the document, the names and descriptions of the parties presenting it and the reason for his refusal.

58. A landholder or his agent may at all reasonable times enter upon any land comprised in his estate or holding and not occupied by buildings for the purpose of surveying and measuring such land.

Right to measure land.

This corresponds to section 128 of the Act of 1926 which in its turn reproduced section 98 of the Act of 1901 and section 30 of the Oudh Act.

<sup>1</sup> *Muneshar v. Oudh Narain Dhar*, XX U. D. 230=1939 R. D. 247.

<sup>2</sup> *Ghulam Abbas v. Bisheshar*, 1 L. R. Rev. 132=11 U. D. 257=6 R. D. 456

<sup>3</sup> Notification No  $\frac{2448}{1-203-F.}$ , dated the 18th of August, 1902 (Gazette 23rd August 1902, p. 554).

*Declaratory suits*

**59. (1)** Any person claiming to be a tenant or a joint tenant may sue the landholder for a declaration of right or share. Sut by tenant for declaration of right or share. of his share in such joint tenancy.

(2) In any suit under this section any person claiming to hold through the landholder, whether as tenant or otherwise, shall be joined as a party.

1. This section corresponds to section 121 of the Act of 1926. The words "any person claiming to hold through the landholder, whether as tenant or rent-free grantee or otherwise" have been replaced by "any person claiming to be a tenant or a joint tenant", and the words "for a declaration of his share in such joint tenancy" have been added. Sub-section (2) has been accordingly modified into the present sub-section (2).

The words "any person claiming to be a tenant or a joint tenant" substituted for "at any time during the continuance of a tenancy the tenant of a holding" taken in conjunction with the rest of the section, do not really produce any significant change.

The Oudh Act contained no such specific section. Section 108 (6) provided for a suit by a tenant for establishing a right of occupancy. But as amended in 1939 section 108 (13b) provides for a suit for a declaration of right as a tenant.

Sections 121, 122 and 123 of the Agra Act of 1926 purported to reproduce, in clearer language, section 95 of Act II of 1901, sections 121 and 122 corresponding to clause (a) thereof, and sections 123 to the rest.

2. A suit under this section can be brought only while the alleged relation of landholder and tenant subsists. There is no other period of limitation.<sup>1</sup> A tenancy continues so long as it is not extinguished. When a co-tenant migrates from the village leaving the holding in possession of co-tenants, he and his heirs after his death continue as tenants until the claim to the interest as co-tenant is barred by limitation. Hence until such extinction, a suit under section 59 may be brought.<sup>2</sup> Once it comes to an end the section ceases to apply.

Section 45 enumerates the cases where a tenancy is extinguished. A tenant ejected from his holding cannot sue under the section, unless he

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<sup>1</sup> *Tulshi Ram v. Pabitra Kuar*, XV U. D. 92=15 L. R. Rev. 291; *Lalji Sahai v. Ram Narain*, 15 L. R. Rev. 567=XV U. D. 325.

<sup>2</sup> *Mohan Pandey v. Chhatradhari*, 14 L. R. Rev. 916=XIV U. D. 515.



Where *A* and *B* claim a holding as rivals, and *A* sues for declaration of his right in a civil court, *B* may sue him and the landholder in a revenue court under the section.<sup>1</sup> A suit for a declaration of plaintiff's right as a tenant of a portion of the area of a plot, on the ground that the plot formed part of the ancestral holding of the parties, is under the section.<sup>2</sup>

Where a widow remarries her co-tenant who takes possession of the whole holding claiming through the landholder, a reversioner of her husband may sue under section 183, but not under section 59 or section 180.<sup>3</sup>

A tenant plaintiff must start off with the allegation that he is the proprietor or a tenant of the holding. If he asserts that he is the proprietor of the land and that *B*, though the zamindar, has been illegally interfering with his possession, and that therefore he seeks a declaration of his right, the suit is not within the section, although *B* pleads that *A* is his tenant. Where out of four branches of a family three are recorded as occupancy tenants and the fourth as in possession with the other three, and the zamindar does not object, the fourth is entitled to be recorded as an occupancy tenant in spite of any objection by one of the other three.<sup>4</sup>

Section 192 enables a suit to be brought in respect of rent-free grants and section 206 in respect of groveland to the effect mentioned in sections 59, 61.

The substitution of "any" for "the" will enable any one of the co-tenants to sue.

Under the Act of 1901 it was held that a suit by one of several joint tenants was not bad.<sup>5</sup>

In a joint Hindu family, while the father is alive, his son cannot sue for a declaration that he possesses a share in a fixed-rate holding.<sup>6</sup>

**4. Holding.**—The word holding is no longer a part of the section, but is displaced by the word 'tenancy.' It was ruled that *holding* in section 95 of the Act of 1901 was not confined to an agricultural

<sup>1</sup> *Sheikh Murli v. Sheikh Salim*, 7 L. R. Rev. 319—1926 R. C. 403—VII U. D. 189—10 R. D. 528.

<sup>2</sup> *Ram Pratab Singh v. Chottey Lal Singh*, 26 A. L. J. 431—1928 A. I. R. All. 269—1926 R. C. 29—109 I. C. 419—IX U. D. (H. C.) 165—9 L. R. Rev. 154—12 R. D. 136.

<sup>3</sup> *Surja v. Govind Singh*, XIX U. D. 264—1938 R. D. 935.

<sup>4</sup> *Sultan v. Dwarka*, XVIII U. D. 24—1937 R. D. 15.

<sup>5</sup> *Harnam v. Phunda*, III U. D. 642—1 L. R. Rev. 9—4 R. D. 453; *Amdani Bibi v. Sri Ramchandra Naik*, V U. D. 518—4 L. R. Rev. 306—1923 R. C. 131—7 R. D. 312.

<sup>6</sup> *Jokhan Lal v. Jwala Prasad*, 14 L. R. Rev. 188—XIV U. D. 432.

holding, and the lessee of a right to cut thatching grass,<sup>1</sup> or of a right to collect grass grown,<sup>2</sup> was as tenant held entitled to sue. The two objects mentioned above come within the definition of *sayar*, but what is paid for *sayar* is rent, and a *sayar* holder comes within the definition of tenant.

5. **The landholder.**—See section 3 (11) for meaning. Usually it means the person who admitted the plaintiff as tenant or as against whom he is the tenant, *i. e.*, the person to whom he is liable to pay rent.

6. A suit under section 59 is No. 3 of Group B of the Fourth Schedule. The court-fee is eight annas. There is no limitation. It lies in the Court of the Assistant Collector of the First Class with an appeal to the Commissioner. In Oudh the suit was provided for by section 108 (6) and after the amendment of 1939 it is provided for by 108 (13b).

7. **For declaration that he is a tenant.**—A simple suit of *A* for a declaration that he is the tenant in respect of a holding of which *B* is the landholder presents no difficulty, but is not very common, for the simple reason that if he is in possession, there is no need for such a suit. If he is not in possession he is either kept out of possession by the landholder or someone else and that leads to complex or complicated plaints. Many positions are conceivable :—

- (i) that he was admitted to the holding either orally or under a lease or *kabuliat*, but the landholder refuses to recognise his position, and to give him possession ;
- (ii) that after letting the land to him, the landholder has put somebody else in possession who refuses to recognise his position ;
- (iii) that though he is the tenant, somebody else has set himself up as tenant ;
- (iv) that he is a part tenant with the person in possession as tenant ;
- (v) that the landholder has obtained an illegal or unauthorised surrender of the holding ;
- (vi) that an illegal order of ejectment, whether followed or not by actual ejectment, has been passed ;
- (vii) that the landholder under the wrong impression that the holding has been abandoned refuses to reinstate him ;
- (viii) that the landholder under the wrong impression that the last admitted tenant died heirless, although, he the plaintiff, is such heir, refuses to recognise his status as tenant ;

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<sup>1</sup> *Sher Alam Khan v. Muh Said Khan*, III U. D. 123=5 Rev. and Cr. L. J. 17=

1 U. P. L. R. 11=52 I. C. 228=4 R. D. 527.

<sup>2</sup> *Tapai v. Ramdhari*, IV U. D. 374.

(ix) that though he was out of possession for a time, his right as tenant has not become barred, although the landholder thinks so ;

(x) that though the Government acquired the land in the holding for a public purpose, it has restored the land to its original use ;

(xi) that although there was a fusion of proprietary interest and tenancy interest for a time, there never was any merger.

(i) As to (i), that the plaintiff was admitted to the holding. The plaintiff may aver that the holding was initially let to him ; or that he was previously in possession as subtenant, or mortgagee, and the tenancy-in-chief having terminated, he has under the law or by agreement become the tenant-in-chief ; or that the mortgage having terminated, he has become the tenant. These cases present no difficulty. This suit is for recognition of his status as tenant and clearly falls under section 59.

A suit for a declaration, in answer to a notice of ejectment, that the plaintiff holds under a perpetual lease. is a suit of the nature of the suit in section 61, and does not lie in a civil court.<sup>1</sup>

(a) Where he holds under a lease or *kabuliat* the genuineness or validity or both of that document may be open to challenge. A simple suit for a declaration by a tenant that the lease is genuine and valid would be in effect a suit to declare the plaintiff's status as tenant and hence is cognizable exclusively by a revenue court, and if the revenue court has already decided in favour of or against the lease, a civil suit does not lie to get round that decision.

If the landholder alleges that the lease has expired, he must go to a revenue court in ejectment.<sup>2</sup> That court can go into the question of the genuineness of a lease or other document set up by an alleged tenant in proof of his status as tenant,<sup>3</sup> though in a general way of speaking it may not have exclusive jurisdiction in the matter.<sup>4</sup>

A suit for cancellation of a lease for breach of a condition as to alienation and for declaring the alienation void, or in the alternative for a declaration that the lease is cancelled for breach of its conditions is really a suit of the nature contemplated by section 172 and does not lie in a Civil Court.<sup>5</sup>

<sup>1</sup> *Bhawani Bhat v. Rup Mahesh*, 3 O. C. 87.

<sup>2</sup> *Chhab Narain v. Sri Krishna Din*, 12 O. C. 164 ; *Bish Nath Saran Singh v. Sula Bakh Singh*, 1924 A. I. R. Oudh 69=5 L. R. Rev. (O.) 57=1923 R. C. 576=8 R. D. 784

<sup>3</sup> *Sheo Ratan v. Ram Narain*, 9 O. L. J. 98=66 I. C. 119 ; *Jaagan Nath Singh v. Drigbijay Singh*, 21 O. C. 210 ; *Khiali v. Bihari Lal*, III U. D. 327.

<sup>4</sup> *Debi Bakhsh v. Ram Dhani*, 19 O. C. 58.

<sup>5</sup> *Lal Jagdish Bahadur v. Sheo Raja*, 6 O. C. 289.

Where a notice was cancelled on the finding that the lease was proved and valid, a civil suit does not lie for a declaration that the lease is a forgery, or that it was given by a person having no authority to execute it or that the tenant is liable to ejectment.<sup>1</sup>

In *Jagan Nath Singh v. Drighjay Singh*,<sup>2</sup> in a suit to contest a notice of ejectment, the revenue Court cancelled the notice, holding that the plaintiff had made out a *prima facie* case of under-proprietary right. The *talukdar* sued in a Civil Court, for a declaration that the defendant had no such right, that he was a mere tenant of the land in question, that the lease set up by the defendant is a fictitious deed and that the decision of the Board of Revenue was erroneous. The defendant, at the trial, gave up all pretence to proprietary or under-proprietary rights, and pleaded that he was an occupancy tenant. The issue was therefore narrowed down to whether the defendant was a mere tenant or an occupancy tenant. The trial of this issue is within the exclusive jurisdiction of revenue courts. The court should therefore stay its hand, and not proceed further to decide whether the *patta* was genuine or fictitious.

A's crop was distrained for arrears of rent by the zamindar. A contested the distraint on the plea that he was a *muafidar* (to whom section 95 of Act II of 1901 did not apply) and that his so-called guardian had no business to execute a lease or agreement to pay rent therefor. The revenue court found against his claim, held him to be a tenant and the lease or agreement to be binding, and decided the proceeding against him. A's suit in a Civil Court for a declaration that the land was *muafi* and the zamindar had no right to take rent from him as the so-called guardian was not his guardian and had no power to enter into a lease or agreement was held not maintainable, as the suit was in effect for a declaration that the revenue court decision was wrong.<sup>3</sup>

Except for the previous revenue court decision the civil court would have been quite competent to grant the declaration, as section 95 of the Act of 1901 did not apply to *muafi*-holders, (nor does section 59 of the present Act.)

Where a landholder obtains a decree for arrears of rent against a tenant on the basis of a *kabuliat* set up by him the tenant cannot sue in a Civil Court for a declaration that the *kabuliat* was a forgery.<sup>4</sup> In *Nanda v. Muhammad*,<sup>5</sup> a single judge held that a civil suit lies to cancel a revenue court decree for arrears of rent obtained by fraud.

A civil suit was held to lie at the instance of a lessee for the specific performance of an agreement to grant a perpetual lease.<sup>6</sup> The point was

<sup>1</sup> *Badri v. Khurshed Ali Khan*, 20 O. C. 182 ; *Dharam Raj v. Bhundu Khan*, 18 O. C. 84.

<sup>2</sup> 21 O. C. 210.

<sup>3</sup> *Ajudhia Puri v. Birj Bhukan*, 17 A. L. J. 922—51 I. C. 143—5 R. and Cr. L. J. 175—1 U. P. L. R. (A.) 64.

<sup>4</sup> *Keshab Deo v. Bahori*, S. A. 883 of 1905 decided on 30th November, 1906 ; see also 20 O. C. 182 ; 18 O. C. 84 cited above.

<sup>5</sup> 11 U. D. 722.

<sup>6</sup> *Dip Chand v. Muhammad Khalil*, 47 All. 626—23 A. L. J. 505—1925 A. I. R. All. 584—VI U. D. (H. C.) 479—11 R. and Cr. L. J. 160—6 L. R. Rev. 152—1925 R. C. 290, 331—88 I. C. 162—9 R. D. 161.

really not argued or considered by the judges. The question is whether the real object would not have been served by a suit under section 61.

A suit by a landholder that a lease set up by the tenant was given by an unauthorised person and was therefore not binding on him is really a suit under section 61 or for ejectment and does not lie in a Civil Court, as any substantive relief which the plaintiff may get by the declaration being allowed could be granted by the revenue court in a properly framed suit<sup>1</sup> specially if the revenue court has already in a suit for ejectment upheld the lease,<sup>2</sup> for in a suit under sections 183, 59, 61 or for ejectment it is the duty of the revenue court to decide as to the genuineness, validity or terms of a lease set up before it can decide the suit.<sup>3</sup> A landholder cannot sue in a Civil Court for a declaration that a perpetual lease set up by an admitted tenant is not binding on him, for its validity and effect can be determined by a suit under section 61 or for ejectment.<sup>4</sup> So a civil suit does not lie for the ejectment of a lessee on the ground that it is not binding on the plaintiff-landholder as it was given by an unauthorised person.<sup>5</sup>

A landholder may sue for ejectment of a tenant holding under a perpetual lease without getting it cancelled as a lease not binding on him.<sup>6</sup>

Where *A* sets up an oral lease in his favour and *B* a registered lease in his favour, a Civil Court cannot adjudicate on either lease.<sup>7</sup>

*Phool Singh v. Gobind Koer*,<sup>8</sup> should, however, be noticed. In a suit for ejectment brought by a landholder against his tenant, the latter set up a lease granted by the plaintiff's father. The Assistant Collector refused ejectment until the validity of the terms of the perpetual lease granted on very favourable terms to the lessee had been decided by a competent court. The landholder then sued in a Civil Court for a declaration that the lease being of ancestral property and not beneficial to the estate and having been obtained by the exercise of undue influence by the lessee

<sup>1</sup> *Rai Kishan Chand v. Mahadeo Singh*, 21 A. W. N. 49; *Badri v. Khurshed Ali Khan*, 20 O. C. 182; *Dharam Raj v. Bhondur Khan*, 18 O. C. 84.

<sup>2</sup> *Ram Singh v. Rao Gurraj Singh*, 37 All. 41=12 A. L. J. 1252=26 I. C. 731. See the last two cases cited in the previous note.

<sup>3</sup> *Nathwa v. Jagdish Narain*, 1 U. D. 262=32 I. C. 905 (suit under section 54); *Bibi Jan v. Mutsaddi*, VII U. D. 206=7 L. R. Rev. 349=1926 R. C. 438=10 R. D. 575.

<sup>4</sup> *Sher Khan v. Debi Prasad*, 37 All. 254=13 A. L. J. 364=28 I. C. 552; *Pooran Singh v. Haidari*, 39 I. C. 358=3 R. and Cr. L. J. 94; *Khiali v. Bihari*, III U. D. 327.

<sup>5</sup> *Sundar Lal v. Kifayat Husain Khan*, V U. D. (H. C.) 22=8 R. and Cr. L. J. 126=1922 R. C. 14=3 L. R. Rev. 134=8 R. D. 529.

<sup>6</sup> *Raj Koop v. Kandhay*, 47 All. 2=22 A. L. J. 846=1924 A. I. R. All. 755=VI U. D. (H. C.) 292=5 L. R. Rev. 313=1924 R. C. 460=82 I. C. 238=11 R. and Cr. L. J. 12=9 R. D. 341.

<sup>7</sup> *Sita Ram v. Chait Ram*, 1923 A. I. R. All. 257=V U. D. (H. C.) 181=4 L. R. Rev. 291=1923 R. C. 243=71 I. C. 447=7 R. D. 96.

<sup>8</sup> 80 I. C. 399=5 L. R. Rev. 141=1924 R. C. 201.

who was his father's mistress, was not binding on him. The Bench very reluctantly and hesitatingly granted the declaration, though they held that they could not grant possession. The case is only authority for the view that if the Revenue Court expressly refuses to go over the question of the validity of a lease set up and leaves to a Civil Court to adjudicate upon it, the Civil Court may entertain a suit of the nature.

In *Gomti Kunwar v. Gudri*,<sup>1</sup> where in a rent suit the revenue court had decided that a lease set up by the defendant was genuine, the landholder's civil suit for a declaration that the lease was not genuine was held not to be barred by the rule of *res judicata*. The question whether such a suit lay at all was not considered by the learned judge. *Husain Shah v. Gopal*,<sup>2</sup> held a civil suit maintainable.

(b) If *A* claims proprietary rights in a land, he may go to a Civil Court for declaration of right, but if in a revenue suit brought by the landholder against *A*, it has been held that *A* is a tenant, either because *A* did not raise the plea of proprietary title or the plea was decided against him, *A* cannot sue in a Civil Court for declaration of his proprietary rights.<sup>3</sup> Similarly if the revenue court in a similar suit had decided that *A* was proprietor and not tenant the plaintiff cannot resort to a civil suit for declaration of his title and for possession, describing the defendant as a trespasser.<sup>4</sup>

So if the revenue court had held *A* to be a fixed-rate tenant and therefore not liable to ejectment, the plaintiff is debarred from proceeding to a Civil Court to dispossess *B* as a trespasser.<sup>5</sup> A decision by a revenue court that *A* is an exproprietary tenant of certain land cannot be questioned by the parties in a civil court.<sup>6</sup>

But if the revenue court had refused ejectment on the ground that *B* was not an agricultural tenant of the plaintiff and therefore the revenue court had no jurisdiction, a civil suit to dispossess *B* as a trespasser lies.<sup>7</sup>

If the revenue court did not decide the question of proprietary title and dismissed the suit on the basis that *B* had a *prima facie* right to hold the land either as tenant or as proprietor, a civil suit for declaration of plaintiff's title and possession would lie.<sup>8</sup>

(c) Similarly, a suit by a tenant that he is a tenant of a particular class or under a particular tenure or on particular terms and that a lease or *kabuliat* relied on by the landholder is not genuine or valid, or a

<sup>1</sup> 25 All. 138—22 A. W. N. 202.

<sup>2</sup> 2 All. 428 followed in 20 All. 241.

<sup>3</sup> *Salik Dube v. Deoki Dube*, 2 A. L. J. 334—27 A. W. N. 1; *Beni Pande v. Koushal Kishore*, 29 All. 160—4 A. L. J. 53—27 A. W. N. 6; *Kalyan v. Tika Ram*, 2 I. O. 353; *Rahmat Khan v. Talib Husain*, 11 U. D. 761.

<sup>4</sup> *Sunder Singh v. Dina Nath*, 37 All. 280.

<sup>5</sup> *Maharaja of Visianagram v. Chango*, 7 A. L. J. 555—6 I. C. 834.

<sup>6</sup> *Mool Chand v. Ilfat Husain*, 4 Luck. 220—1929 A. I. R. Oadh 362—115 I. C. 837—13 R. D. 104.

<sup>7</sup> *Raj Mangal v. Mackinnon*, 10 I. C. 875.

<sup>8</sup> *Chauharja Singh v. Surabjit*, 10 A. L. J. 85—15 I. C. 303.

forgery, is one to get in effect a relief under section 61 and is cognizable exclusively by the revenue court which can and must enquire and decide on the genuineness or validity or both of the lease or *kabuliat*. For instance, a suit for a declaration that the plaintiff intended to take a lease for two years, but the lease as actually executed was in perpetuity and is not binding on the plaintiff is really a suit to determine the terms of the tenure of the plaintiff and is one under section 61 exclusively within the jurisdiction of a revenue court and outside the cognizance of a Civil Court.<sup>1</sup>

A person whose claim to an occupancy tenancy has been negatived by a revenue court acting under the Land Revenue Act cannot sue in a Civil Court for a declaration that he is an occupancy tenant.<sup>2</sup>

Where a tenancy is admitted and the question is whether the lease which covered it is terminable or perpetual, the suit is under section 61 and within the exclusive jurisdiction of the revenue court.<sup>3</sup>

(d) A suit by a landholder for a declaration that *A* is not his tenant is not under section 60 or section 61 and ostensibly lies in a Civil Court<sup>4</sup>; and a suit for a declaration that a lease set up by *A* is forged or invalid is a civil suit; but if he sues for a declaration that *B* and not *A* is his tenant, the suit is under section 61 and within the exclusive jurisdiction of a revenue court, which can decide as to the validity or genuineness of any lease set up by *A*, and hence in such a case, a landholder's suit for a declaration that the lease exhibited by *A* is forged or invalid does not lie in a Civil Court.

(ii) As to (ii), where after letting to *A*, the landholder has let the same land to *B*. In such a case the suit may be for a simple declaration that *A* and not *B* is the tenant of the landholder, which clearly comes under section 59, or it may be a suit for such a declaration and for possession, i. e., a combined suit under section 59 and section 183. The suit may be either against the landholder or *B* or both.

Under Act II of 1901 it was held that dispossession by the subsequent lessee was dispossession by the landholder.<sup>5</sup> At the same time it was held in 13 A. L. J. 295, that a suit by the first lessee against the subsequent lessee (to which the zamindars were made parties but they did not contest the suit) was one between rival claimants to a holding and therefore lay in a Civil Court, although the revenue court had previously awarded a decree for arrears of rent to the second lessee against the first

<sup>1</sup> *Mukhtari v. Harbans Singh*, 1928 A. I. R. All. 614=IX U. D. (H. C.) 111=9 L. R. Rev. 216=118 I. C. 872=12 R. D. 386.

<sup>2</sup> *Sri Harakh v. Jagrani*, III I. C. 656=12 R. D. 375.

<sup>3</sup> *Ganga Ram v. Beni Ram*, 7 All. 148=4 A. W. N. 312; *Mahip Singh v. Chotu*, 3 A. W. N. 67; *Antua v. Ghulam*, 6 All. 110.

<sup>4</sup> *Naram Rao v. Kulka*, II U. D. 747. See notes to section 60.

<sup>5</sup> *Balbhadar v. Somaru*, 13 A. L. J. 295=27 I. C. 914; *Ram Lal v. Chunni Lal*, 27 All. 372=2 A. L. J. 69; *Sokhai v. Ram Prasad*, 7 I. C. 486; *Maula v. Bahala*, 19 All. 34=16 A. W. N. 169; *Prayag v. Mahabir*, 1922 A. I. R. All. 317=V U. D. (H. C.) 109=1922 R. C. 245=3 L. R. Rev. 233=69 I. C. 811=7 R. D. 14.

lessee as sub-tenant. The decision is open to one obvious objection that the relation of landholder and tenant being recognised by a competent revenue court could not be re-agitated in a Civil Court. Under the present sections 183, 59 this suit would lie only in a revenue court.

Where two claimants to a tenancy rely on leases in their favour and one of them has dispossessed the other, the person dispossessed cannot sue the other for possession and declaration of title, damages and injunction in a Civil Court, as some of these reliefs offend against the provisions of section 242.<sup>1</sup>

(iii) As to (iii) where someone else, say *B*, sets up a tenancy in himself. If the landholder is a party, the considerations in case (ii) will apply; if he is not a party, whether the suit falls under section 59 or section 183 or both depends on the expressions used in the plaint. If the plaint indicates that *B* is claiming through the landholder as tenant the suit is either under section 59 or section 183 or both.<sup>2</sup>

If, however, there is no such indication and *B* is sued as a trespasser, pure and simple, a civil suit provides the only remedy, unless section 180 is resorted to.<sup>3</sup>

Where the real dispute between rival claimants of a grove was the right to transfer the grove or a part of it, the revenue court is the proper forum.<sup>4</sup>

Under Act II of 1901, a suit between rival tenants, *i. e.*, a suit by *A* against *B* that he and not *B* was the tenant of a holding was one for a Civil Court,<sup>5</sup> even though the landholder was impleaded but no relief was sought as against him.<sup>6</sup> So under the Oudh Act.<sup>7</sup>

<sup>1</sup> *Sita Ram v. Chait Ram*, V U. D. (H. C.) 181.

<sup>2</sup> *Ram Iqbal Rai v. Telesari Kuari*, 1930 A. I. R. All. 713=11 L. R. Rev. 349; *Balesar Pandey v. Ram Tahal*, 1930 A. I. R. All. 559=XI U. D. (H. C.) 236=11 L. R. Rev. 189=14 R. D. 409.

<sup>3</sup> *Ananti v. Chunni*, 52 All. 501=1930 A. L. J. 256=1930 A. I. R. All. 193=XI U. D. (H. C.) 201=11 L. R. Rev. 150=124 I. C. 540=14 R. D. 201. *Contra*, *Nandan Mallah v. Muh. Ali*, 1929 A. L. J. 940=118 I. C. 588=XI U. D. (H. C.) 571=11 L. R. Rev. 14=13 R. D. 756. See also *Bahadur v. Mahabir*, II U. D. 114.

<sup>4</sup> *Bochehaz v. Daulat Ram*, 1936 A. I. R. All. 64=1935 R. D. 414=XVII U. D. 65=XVI U. D. 500=160 I. C. 865. (The plaintiff's claim was about trees in a grove which had been sold by defendant.)

<sup>5</sup> *Bhup v. Ram Lal*, 33 All. 795=8 A. L. J. 1009=11 I. C. 268; *Inayatunnissa v. Salimunnissa*, 29 I. C. 568; *Harbaran Lal v. Naurangi*, 60 I. C. 613=6 R. and Cr. L. J. 322=2 U. P. L. R. (A.) 382; *Muh. Zahid Ali v. Muh. Husain*, V U. D. 447=9 R. and Cr. L. J. 231=1923 R. C. 99=4 L. R. Rev. 211=7 R. D. 258, but see *Prayag v. Mahabir*, V U. D. (H. C.) 109.

<sup>6</sup> *Nakchedi v. Ram Das*, 11 A. L. J. 447.

<sup>7</sup> *Kalpa Nath v. Mata Din*, 18 O. C. 48; *Lachman v. Ram Singh*, 24 O. C. 15=61 I. C. 290; *Saheb Din v. Mahabir Singh*, 3 Luck. 273=X U. D. (H. C.) 7=9 L. R. Rev. 350=12 R. D. 326, distinguishing *Dilwar Khan v. Kulsum*, 13 O. L. J. 496=93 I. C. 62; *Thakur Dei v. Parbhu*, IV U. D. 636=3 L. R. Rev. 42.



If such a contention arose incidentally in a suit properly within the cognisance of a Civil Court, *e. g.*, in a suit for damages by *A* against *B* for cutting away his crops, there was no reason for shutting out the Civil Court jurisdiction.<sup>1</sup>

If, however, a competent Revenue Court had already decided in a suit that *A* was the tenant-in-chief and *B* was only his sub-tenant and had ejected him, *B* could not sue in a Civil Court that he and not *A* was the tenant-in-chief.<sup>2</sup>

The facts in 43 All. 191 were these :—

In a Revenue Court litigation, in 1898, it was held that *A* and not *B* was the occupancy tenant of certain plots constituting a holding. In 1914, *B* sued *C, D, E*, who alleged themselves to be heirs of *A* and in occupation of the plots as such, for ejectment, and it being held that they had not inherited the holding they were ejected. In 1915, in a suit for arrears of rent brought by *B* against *C, D, E*, it was ruled in view of what had been decided in 1914 and other evidence that the latter were subtenants of *B*. The civil suit of *C* and *D* that they were the occupancy tenants was held not maintainable by three judges.

Even a suit under section 9, Specific Relief Act, would not have been open to *C, D*, on the ground that they had been dispossessed without their consent.<sup>3</sup>

The pendency of a revenue suit between *A* and *B* in which the issue was whether *A* was the tenant of the land or a subtenant of *B* was enough to incline the Civil Court not to grant a relief of declaration to the effect raised in the issue.<sup>4</sup>

If the Revenue Court had decided that *C, D*, were the tenants-in-chief and not *B*, the latter could not have gone to a Civil Court for a declaration that he was the tenant-in-chief.<sup>5</sup>

But if the Revenue Court had not decided the issue raised, leaving it to a competent court, a civil suit would have lain.<sup>6</sup>

<sup>1</sup> *Ganesh v. Kundan*, 15 I. C. 33.

<sup>2</sup> *Mulla v. Ram Lal*, 43 All. 191 (F. B.)=18 A. L. J. 1030=1921 A. I. R. All. 348=IV U. D. 814=1 L. R. Rev. 177=7 R. and Cr. L. J. 9=2 U. P. L. R. (A.) 400=9 R. D. 393, *Contra*, *Kanhai Ram v. Durga Prasad*, 37 All. 223=13 A. L. J. 278=27 I. C. 913.

<sup>3</sup> *Rajwant Kuar v. Mahabir Rai*, XII U. D. (H. C.) 63=12 L. R. Rev. 47=15 R. D. 185; *Khushnud Husain v. Janki Prasad*, 53 All. 532.

<sup>4</sup> *Fateh Singh v. Gopal Narain Singh*, 48 All. 88=23 A. L. J. 941=1925 A. I. R. All. 637=89 I. C. 1013=IV U. D. (H. C.) 553=5 L. R. Rev. 206=1925 R. C. 450=11 R. and Cr. L. J. 301=9 R. D. 63; *Ganga Chamar v. Bindeshri*, 47 All. 904=23 A. L. J. 529=1925 A. I. R. All. 615=88 I. C. 684=1925 R. C. 361=11 R. and Cr. L. J. 216=VI U. D. (H. C.) 499=6 L. R. Rev. 173=9 R. D. 166.

<sup>5</sup> *Ram Das v. Dubri*, 44 All. 724=20 A. L. J. 606=V U. D. (H. C.) 75, 111=1922 R. C. 111=8 R. and Cr. L. J. 295=7 R. D. 17; *Janki v. Debi Shankar*, 1922 A. I. R. All. 274=V U. D. (H. C.) 125=1922 R. C. 429=69 I. C. 799=7 R. D. 10.

<sup>6</sup> *Chauharja Singh v. Sarabjit*, 10 A. L. J. 85=15 I. C. 303.

So if the Revenue Court did not dispose of a previous suit by *A* to eject *B* as his subtenant on the plea raised by *B* that he and not *A* was the tenant-in-chief, and dismissed *A*'s suit for a technical defect, *A* could sue *B* in a Civil Court as a trespasser who had denied his title,<sup>1</sup> to establish his right as the tenant-in-chief and for possession. The decision is open to the objection that *A* having once admitted *B* to be his subtenant could not eject him except as provided by the Tenancy Act and denial of title is not one of the grounds of ejectment mentioned in the Act and the Civil Court is not the proper forum for such a suit.

A suit for recovery of possession by a person alleging himself to be a co-tenant or the tenant having a better right than the defendant does not lie in a Civil Court.<sup>2</sup>

(iv) As to (iv), that he is a joint or part tenant with *B*, it is now expressly mentioned and the proper forum for the suit is the Revenue Court.<sup>3</sup> If the entry in a settlement khatauni is in *B*'s name, *A*, belonging to some other branch of the family, must prove his co-tenancy with *B*.<sup>4</sup> Under Act II of 1901, section 95 did not apply to suits between persons claiming as joint tenants<sup>5</sup> with other defendants in the suit, but under the present Act, section 59 does apply, and such a suit is within the exclusive cognizance of a Revenue Court. It was held that if in a previous Revenue Court proceeding, *e. g.*, for ejectment, the court had decided that the defendant sought to be ejected was not a joint tenant with the then plaintiff, the then defendant could not sue in a Civil Court for a declaration that he was a joint tenant with the then plaintiff, now defendant.<sup>6</sup>

And if the Revenue Court had held that the plaintiff and defendant in the ejectment suit or other proceeding before it were co-tenants and acted accordingly, the then plaintiff could not and cannot institute a civil suit to eject the defendant that the latter had denied his title and

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<sup>1</sup> *Jagan Nath v. Ajudhia Singh*, 35 All. 14=10 A. L. J. 408=17 I. C. 376.

<sup>2</sup> *Sheo Shankar Singh v. Sangram Singh*, 1938 A. L. J. 373=XIX U. D. (H. C.) 52=1938 R. D. 458.

<sup>3</sup> *Amar Singh v. Govind Ram*, 47 All. 616=23 A. L. J. 449=1925 A. I. R. All. 465=1925 R. C. 273=88 I. C. 247=VI U. D. (H. C.) 510=6 L. R. Rev. 168=11 R. and Cr. L. J. 222=9 R. D. 147.

<sup>4</sup> *Sukra v. Tulsi*, XVIII U. D. 299=1937 R. D. 460.

<sup>5</sup> *Bunny Pande v. Brahmdeo*, 1931 A. L. J. 852=XII U. D. (H. C.) 182=12 L. R. Rev. 347=133 I. C. 911=15 R. D. 678; *Ram Pertab Singh v. Chotey Lal*, 26 A. L. J. 431=1928 A. I. R. All. 369=IX U. D. (H. C.) 163=7 L. R. Rev. 154=1926 R. C. 29=109 I. C. 419=12 R. D. 1306; *Sahdeo v. Budhai*, 51 All. 853=1929 A. L. J. 849=1929 A. I. R. All. 571=117 I. C. 337=13 R. D. 556; *Khelari v. Har Prasad*, 1930 A. L. J. 1015=1930 A. I. R. All. 434=XI U. D. (H. C.) 248=11 L. R. Rev. 202=14 R. D. 381.

<sup>6</sup> *Kishor Singh v. Bahadur Singh*, 41 All. 97=16 A. L. J. 338=48 I. C. 470; *Gobind v. Ammar*, 1925 A. I. R. All. 194=VI U. D. (H. C.) 86=5 L. R. Rev. 138=10 R. and Cr. L. J. 175=1924 R. C. 139=75 I. C. 628=9 R. D. 385.

for a declaration of such title.<sup>1</sup> In 33 All. 523 the defendant was alleged to be a subtenant, and as such he could not be ejected except as provided by the Tenancy Act, and denial of title is no ground for ejectment under the Act. So in 41 All. 213 and 24 A. L. J. 1009 (a three judge case).

Though under the law then prevalent, *A* could sue *B* in a Civil Court for a declaration that he was a co-sharer in the tenancy with *B*,<sup>2</sup> the pendency of such a suit did not preclude a competent Revenue Court from entertaining *B*'s suit to eject *A* as his sub-tenant.<sup>3</sup> The grant of a decree for ejectment by the Revenue Court, though it does not affect the question we are considering, created another difficulty in the path of *A*'s civil suit.

But though *A* could sue *B* in a Civil Court for a declaration that he was a joint tenant with him, there was no warranty for the proposition that he could sue in a Revenue Court for a declaration that he was the sole occupancy tenant and *B* was not a co-sharer in the tenancy with him. A single judge, however, held to the contrary and decided that such a suit did lie, and that *A* could not sue for the same relief in a Civil Court.<sup>4</sup> Under the present Act, section 59, if the plaint shows that *B* was claiming to hold as tenant the decision would be right, otherwise not.

If *A* sued *B* for a declaration that *B* was his subtenant and not a joint tenant with him, the Revenue Court was and is the proper forum.<sup>5</sup>

*A* and *B*, two females, were occupancy tenants of a holding *B* granted a perpetual lease of the holding to *C* and *D* without *A*'s consent. *A* sued *B*, *C* and *D* in a Civil Court for a declaration that the lease was invalid and for maintenance of her possession or, in the alternative, for possession. The plea of jurisdiction was raised. The High Court held that, on the allegation in the plaint, the Revenue Court was the proper forum for the suit.<sup>6</sup> The learned judges observed "We consider that

<sup>1</sup> *Narain Singh v. Gobind Ram*, 33 All. 523=8 A. L. J. 431=9 I. C. 1022; *Baljit v. Mohipat*, 41 All. 213=17 A. L. J. 60=5 R. and Cr. L. J. 53=49 I. C. 118; *Balwanti v. Sarabjit*, 1927 A. I. R. All. 70 (F. B.)=24 A. L. J. 1009=VII U. D. (H. C.) 222=7 L. R. Rev. 393=1926 R. C. 485=10 R. D. 77.

<sup>2</sup> *Kallu v. Kashi*, V U. D. 462=4 L. R. Rev. 232=9 R. and Cr. L. J. 242=1923 R. C. 157=7 R. D. 266.

<sup>3</sup> *Harkesh v. Hem Raj Rao*, VII U. D. (H. C.) 215; 7 L. R. Rev. 386=1926 R. C. 481=10 R. D. 325; *Nohar v. Pratab*, 21 A. L. J. 89=1924 A. I. R. All. 131=VI U. D. (H. C.) 25=5 L. R. Rev. 1=1923 R. C. 541=10 R. and Cr. L. J. 26, 72=79 I. C. 367=8 R. D. 329; *Ram Datt v. Maktula*, II U. D. 683; *Najibullah v. Gulsher Khan*, 31 All. 348=6 A. L. J. 343=1 I. C. 594; *Ganga Prasad v. Ram Prasad*, 26 I. C. 862; *Dhanpat Rai v. Jokhan*, 2 I. C. 401.

<sup>4</sup> *Diwan Singh v. Randhera*, 12 A. L. J. 1322=26 I. C. 718.

<sup>5</sup> *Bindeshri v. Guni*, II U. D. 13=2 R. and Cr. L. J. 105=4 R. D. 483; *Khyali v. Parmeshri*, V U. D. 160=6 R. D. 95.

<sup>6</sup> *Duiji Kunwar v. Baila Kunwar*, 1932 A. L. J. 521=1932 A. I. R. All. 460=XIII U. D. (H. C.) 143=13 L. R. Rev. 282=16 R. D. 434.

under section 121, Agra Tenancy Act, it is open to the plaintiff to sue defendant for a declaration in regard to plaintiff's rights in this tenancy. It is further open to the plaintiff to sue under section 44 of that Act for the ejectment of persons such as defendants 2 and 3 (*C* and *D*) whom she alleges to be occupying the plots of land without her consent. As the plaintiff does not definitely say that the defendants 2 and 3 are in possession through a lease, the plaintiff could allege, as the present plaintiff does, that the relief of ejectment of defendants 2 and 3 should be granted if they are found to be in possession. We consider that this would cover all the reliefs for which the plaintiff asks." And all these could be granted by the Revenue Court.

A suit for a mandatory injunction to demolish certain constructions newly put up brought by a tenant against a co-tenant and for a perpetual injunction prohibiting the defendant from doing any act in the future may be brought in a Civil Court.<sup>1</sup>

Where a fixed-rate holding belonging to the members of a joint Hindu family is alienated by some of them only, the others may sue in a Civil Court to set aside the alienation and for a declaration that it does not affect the interests of the family including the plaintiffs, as the individual members are not co-tenants between themselves or *vis-a-vis* the landholder.<sup>2</sup>

A holding once belonged to four brothers *A*, *B*, *C* and *D*. *D* separated and took some of the land as his share, with the result that two independent holdings, one of *A*, *B* and *C*, and the other of *D* came into existence. *B* and *C* died heirless and *A* became the sole owner of the holding of *A*, *B* and *C*. Later on four bighas odd out of that was given to *D*, but the revenue papers recorded the entire holding (formerly of *A*, *B* and *C*) as one holding. *A* sued *D* for partition or for a declaration that certain plots forming his share of this holding belonged to him, and certain other plots belonged to *D*, or that in the entire holding her share was so much. This is a suit under section 59 or section 49 and is within the exclusive jurisdiction of a Revenue Court.<sup>3</sup>

If a person sues under section 59 for declaration of his right as co-tenant and the plea of the tenant in possession is that the plaintiff's right has become barred by time, adverse possession against the plaintiff must be proved. Such possession may be inferred from circumstances, such as non-receipt of profits, non-payment of a share of the rent, decree for arrears obtained by the landholder against the defendant, some mortgages executed by him from time to time as sole-tenant, and that the plaintiff knew it well enough.<sup>4</sup> If defendant's name alone has stood recorded unchallenged for over 30 years and the landholder does not recognise the

<sup>1</sup> *Kirpa Shankar Lal v. Ram Lal*, 1939 A. I. R. All. 386=1939 R. D. 280.

<sup>2</sup> *Deoki Nandan v. Ram Chandra*, 1937 A. L. J. 905=1938 A. I. R. All. 17=XVIII U. D. (H. C.) 225=1937 R. D. 551.

<sup>3</sup> *Bhagwan Sahai v. Ram Chander*, 1932 A. I. R. All. 693=1932 A. L. J. 849=13 L. R. Rev. 356=XIII U. D. (H. C.) 154.

<sup>4</sup> *Vishwa Nath Singh v. Dulia*, XV U. D. 432=16 L. R. Rev. 33.

plaintiff's status as co-tenant with defendant, the suit must fail.<sup>1</sup> Where a dispute is between two persons, each claiming a share in a tenancy, and not with the landholder, section 49, *i. e.*, a suit for division, and not section 59 or section 61 provides the proper remedy<sup>2</sup>.

(v) **As to (v)**, that in spite of an illegal, invalid or unauthorised surrender obtained by the landholder the plaintiff is the tenant. The suit is merely for a declaration that the plaintiff is the tenant of the defendant-landholder and is clearly under section 59 and if possession is also asked for, it also falls under section 183. The Revenue Court in dealing with the suit will enquire into the genuineness or validity or authority or legality of the surrender. Hence a suit for a declaration that a deed of relinquishment is void and that the plaintiff is the tenant of the class to which he belonged before the alleged surrender is one under section 59 or section 61 and exclusively within the jurisdiction of the Revenue Court and wholly outside a Civil Court's jurisdiction.<sup>3</sup> So a suit for a declaration that a deed of surrender of occupancy rights executed by a lady of the family of the plaintiff, a Hindu, in favour of the zamindar, was not binding upon the plaintiff.<sup>4</sup>

The last was a decision by two out of three judges who constituted the Bench. The suit was for declaration that plaintiffs were occupancy tenants of the defendant-zamindar in respect of a certain holding, and asked for a declaration that a deed of relinquishment by a widow of the Hindu family who was the recorded tenant was not binding on them, as the lady had no concern with the holding. The two learned judges ruled that looking at the substance and real object of the suit (and not merely the form of the relief asked for), its nature was such that adequate relief could be given and the suit effectively disposed of by a Revenue Court in a properly framed suit, *e. g.*, a suit under section 59 or section 61.

It was also observed that until the plaintiffs established, as against the zamindar, their status as occupancy tenants, the declaration sought for could not be granted, and, as it would, under the circumstances, be a *brutum fulmen* even if it were granted, the court in its discretion should refuse to grant it. The third learned judge differed from the two, as he thought that the suit being under section 39, and not section 42, Specific Relief Act, and there being no Revenue Court suit pending or decided, the Civil Court was the proper forum.

In some cases before the Act of 1926, the point whether such a suit could lie in a Civil Court came up for decision with varying results. In most of these a Revenue Court suit was also either pending or decided. The following points seem to have been established :—

<sup>1</sup> *Rajabali v. Khalil*, XVIII U. D. 103=1937 R. D. 120.

<sup>2</sup> *Anmol v. Ram Lal*, XVII U. D. 258=1936 R. D. 371.

<sup>3</sup> *Muradan v. Raghunandan Prasad*, VIII U. D. (H. C.) 132=1927 R. C. 117.

<sup>4</sup> *Misri Lal v. Gopi Charan*, 51 All. 114=1929 A. L. J. 13=1928 A. I. R. All. 538=IX U. D. (H. C.) 196=9 L. R. Rev. 272=112 I. C. 391=12 R. D. 562.

that a decision of the Revenue Court on the validity or invalidity of the relinquishment barred the civil suit and put an end to it.<sup>1</sup>

But if the Revenue Court suit was undecided and pending, the Civil Court could grant a declaration as to the invalidity of a relinquishment.<sup>2</sup> The consideration that mostly weighed with the judges who held for the Civil Court jurisdiction was the equitable rule that since usufructuary mortgages of holdings made before 1902 were valid, a mortgagor could not derogate from his grant and defeat the mortgage by making a surrender.

In *Fateh Singh v. Gopal Narain Singh*,<sup>3</sup> a Bench of three judges held that where a Revenue Court has passed a decree for ejectment of the mortgagee after relinquishment by the tenant, a Civil Court, in the mortgagee's suit to declare the relinquishment and ejectment decree ineffective, will refuse to exercise its discretion to grant the declaratory decree.

Suppose, however, that following upon a surrender by a Hindu lady as guardian of the minor son, who was the tenant, the landholder sues to eject the mortgagee of the occupancy holding (the mortgage being illegal as made after 1901 or legal as made before) and obtains a decree, but before he puts the decree in execution by actual ejectment, that minor sues the mortgagee for redemption, impleading the landholder, because he had obtained the surrender (alleged to be invalid or unauthorised or illegal or void) and the decree for ejectment. So far as the landholder is concerned, the suit is for avoidance of the surrender and declaration of plaintiff's right as tenant, and hence is clearly under section 59 and the decision in *Misri Lal v. Gopi Charan*.<sup>4</sup>

(vi) As to (vi), that in spite of an order of ejectment, followed or not by actual ejectment, the plaintiff is the tenant. If plaintiff is in possession the suit is merely for a declaration of right as tenant, coming within section 59; if plaintiff has been dispossessed or is not in possession, a prayer for possession will bring the suit also within section 183. Where the landholder has obtained formal delivery of possession on a decree for ejectment for arrears of rent, the tenancy ends, and the fact that on failure of the landholder to exercise his option of purchasing the crops, the tenant gathers them does not entitle the latter to maintain a suit under

<sup>1</sup> *Shiva Prakash v. Karna*, 35 All 464=11 A L J. 671=21 I C. 3; *Balwant Singh v. Girdhari Lal*, 5 A L J. 30; *Pahalwan Singh v. Satrupa*, 2 A. L. J. 471=25 A. W. N. 178; *Muhammad Ismail v. Martaza Husain*, II U D 745, *Ram Dei v. Bindsari*, 8 A. L. J. 940=11 I. C. 287, (single judge decision, affirmed in L. P Appeal 127 of 1912, decided on 26th July, 1912.) *Contra*, *Chots Lal v. Sheo Gopal Singh*, 33 All. 33=8 A L J. 17=9 I. C. 217; *Suba v. Raghubar Saran*, 7 A. L. J. 291=6 I. C. 234; *Ram Dhari v. Ram Dhari Rui*, 7 A L J 305=2 I. C. 456.

<sup>2</sup> *Brij Kumar Lal v. Sheo Kumar Misra*, 37 All. 444 (F. B.)=15 A. L. J. 649=29 I C. 95=1 R. and Cr. L J 422; *Jai Gopal Narain Singh v Uman Datt*, 8 A L J. 695=10 I. C. 573.

<sup>3</sup> 48 All. 85=23 A. L. J. 941=1925 A I R. All. 637=VI U. D. (H. C.) 553=11 R and Cr. L. J. 301=6 L. R. Rev. 206=1923 R. C 450=9 R. D. 63.

<sup>4</sup> 51 All. 114.

the section, even if he pays up the arrears and carries on infructuous negotiations for readmission; if he was readmitted he may sue under section 183.<sup>1</sup> The Revenue Court will be competent to go into the question of the validity, legality or factum of the order of ejectment. Hence a suit for a declaration that an order of ejectment previously obtained is null and void does not lie in a Civil Court. But suppose the further allegation is that the order was *ultra vires* as it was beyond the jurisdiction of the court which passed it. A civil suit was held to lie, and where the landholder had after the institution of the suit obtained possession, and a prayer for restoration of possession was added, an issue under section 288 was remitted to the Revenue Court for decision.<sup>2</sup>

Where a Revenue Court has decreed *ex parte* a suit for the ejectment of a tenant, the latter cannot sue in a Civil Court for a declaration that he is a co-tenant with the plaintiff in the ejectment case, the plea having been negatived by the Revenue Court, although the civil suit was brought during the pendency of the ejectment suit;<sup>3</sup> nor on the ground that he was really a groveholder and not an ordinary agricultural tenant as held by the Revenue Court. (Under Act II of 1901, it was not quite clear whether a suit for the ejectment of a grove-holder lay in a Revenue Court.)<sup>4</sup>

As to Revenue Court decrees or orders for ejectment alleged to be the result of fraud, see notes to section 242, headed *fraud*.

A Civil Court cannot eject a defendant as licensee, who, in a revenue suit for ejectment, has been found to be a grove-holder and not liable to ejectment.<sup>5</sup>

A zamindar obtained a decree for arrears of rent against a minor tenant and presumably ejected him thereunder. The minor's suit for a declaration that the decree for arrears of rent (and presumably for ejectment) was null and void as it had been obtained without a guardian having been properly appointed to him, is really a suit under section 183, as the substantive relief could be obtained by a suit under that section, and hence does not lie in a Civil Court.<sup>6</sup>

As to (vii), that there has been no abandonment of the holding, and the plaintiff is still the tenant. The suit is for declaration of right as tenant and for possession, clearly under sections 59 and 183.

<sup>1</sup> *Ram Singh v Bhop Singh*, 1932 A. L. J. (B. R.) 114=XIX U. D. 183=1938 R. D. 593.

<sup>2</sup> *Faqira v. Parduman*, 53 All. 715=1931 A. L. J. 529=XII U. D. (H. C.) 98=12 L. R. Rev. 243=135 I. C. 547=15 R. D. 498.

<sup>3</sup> *Kishori Singh v. Bahadur Singh*, 41 All. 97=16 A. L. J. 933=48 I. C. 470=6 R. and Cr. L. J. 12.

<sup>4</sup> *Behari Lal v. Sahu Raghunath Singh*, 1927 A. I. R. All. 613=VIII U. D. (H. C.) 214=8 L. R. Rev. 335=1924 R. C. 260=102 I. C. 887=11 R. D. 188.

<sup>5</sup> *Ram Lagan v. Phakkar Das*, 1928 A. I. R. All. 343=119 I. C. 172=12 R. D. 226=IX U. D. (H. C.) 163=9 L. R. Rev. 141.

<sup>6</sup> *Sukha v. Lachmi Narain*, 26 A. L. J. 834=1928 A. I. R. All. 621=113 I. C. 829=12 R. D. 628, see also *Uma Shankar v. Bhagwan Din*, 7 A. L. J. 1064.

**As to (viii),** plaintiff claiming as heir to the last admitted tenant. The suit is for declaration of status as tenant and may also be for possession, *i. e.*, a suit under sections 59 and 183. In determining the suit, the court will have to enquire into the title of the plaintiff by inheritance, adoption, marriage, etc., and hence a suit for a mere declaration as to such title, *e. g.*, that plaintiff was the adopted son of the last tenant, or his legally married wife, is not to be encouraged, if the only property claimable by such title is an agricultural holding. The Civil Court even if it has jurisdiction will refuse to exercise its discretion to grant a declaration.<sup>1</sup>

If the plaint itself or the circumstances of the case unmistakeably show that the real object of the suit is to assert or deny *A's* title to the holding, the Civil Court will not grant the declaration.<sup>2</sup>

Some cases went much further in denying the jurisdiction of the Civil Court altogether,<sup>3</sup> specially if the plaint itself showed that declaration was a relief merely ancillary to the real relief claimed, *e. g.*, declaration of the class of tenancy, which comes under section 61.<sup>4</sup>

So where a person alleging herself to be the lawfully married wife of the last tenant claims his holding, she must sue under section 59 in a Revenue Court and cannot sue in a Civil Court for a declaration that she was such lawfully married wife and entitled to the estate of the deceased, *viz.*, the holding.<sup>5</sup>

For in such cases, the Revenue Court is competent to, and is the only court that can, enquire into the title of the claimant to the holding, *e. g.*, by adoption.<sup>6</sup>

Under section 121 of the Act of 1926 it was held that where the real object of a suit is to get a declaration as to the right to a tenancy, the fact that the relief asked for was declaration that the plaintiff was the adopted son of *B* (who was the last tenant) and as such entitled to his estate which consisted only of his tenancy, and for injunction, it is not cognisable by a Civil Court.<sup>7</sup>

**As to (ix),** that though out of possession the plaintiff is still the tenant. It is a suit for declaration of status and for possession, clearly

<sup>1</sup> *Moola v Bhooriya*, 1929 A. L. J. 1026=1929 A. I. R. All 613=118 I. C. 583=XI U. D. (H. C.) 35=10 L. R. Rev. 356=13 R. D. 670, (plf adopted son) *Ram Charitra v. Jinsi*, 36 All. 48=11 A. L. J. 1022 (plf. lawfully married wife)

<sup>2</sup> *Birham Khushal v. Sumera*, 35 All. 299=11 A. L. J. 31=18 I. C. 957 : *Girand Singh v. Ram Kumar*, V U. D. 18=3 L. R. Rev. 5=8 R. D. 504

<sup>3</sup> *Jayun Nath v. Balwant Singh*, 44 All. 692=20 A. L. J. 570=8 R. and Cr. L. J. 255=1929 R. C. 301 ; *Brij Raj v. Lalita*, V U. D. 467=4 L. R. Rev. 238=1923 R. C. 167=7 R. D. 274. (suit by landholder) ; *Shormber Singh v. Shoember Singh*, 50 All. 55=1927 A. I. R. All 780=25 A. L. J. 799=VIII U. D. (H. C.) 191=8 L. R. Rev. 211=1927 R. C. 238=103 I. C. 128 (*id.*)

<sup>4</sup> *Dori Lal v. Sardar Singh*, 5 A. L. J. 514=28 A. W. N. 240.

<sup>5</sup> *Ram Charitra v. Jinsi*, 36 All. 48=11 A. L. J. 1022=21 I. C. 859.

<sup>6</sup> *Ram Chandra v. Anant Lal*, XII U. D. 345=12 L. R. Rev. 353=15 R. D. 762.

<sup>7</sup> *Moola v. Bhooriya*, 1929 A. L. J. 1026=XI U. D. (H. C.) 35=10 L. R. Rev. 356=118 I. C. 583.



under sections 59 and 183, and the Revenue Court will enquire into and decide upon the plea of adverse possession.

**As to (x),** that the tenancy revived after the government restored the land to its original uses. The suit is one for declaration of status as tenant and may be also for possession, clearly under sections 59 and 183. The Revenue Court will enquire into the effect of the government action in so restoring the land, and the terms of such restoration.

**As to (xi),** that though proprietorship and tenancy for a time fused, there was no merger and the plaintiff is still a tenant. The suit is for a declaration of status as tenant and clearly under section 59. The Revenue Court will enquire into the so-called merger and its effect.

A suit under section 59 is No. 3 of group B of schedule IV. There is no limitation for it and the court-fee payable is eight annas.

An order for delivery of possession cannot validly be passed in a suit under the section.<sup>1</sup>

Under the Oudh Act a suit by a tenant to establish a right of occupancy was No. 6 of section 108. It was triable by an Assistant Collector of the first class or the Collector, and could be brought within a year of the accrual of the cause of action. If tried by the Collectors an appeal lay to the Commissioner on a point of law only whose order was final. But the Amending Act of 1939 by adding sub-clause (13b) to section 108 provided for "declaration of right as a tenant".

Suit for declaration  
of right of a person  
claiming to be tenant.

**60.** The landholder may sue any person claiming to be a tenant of a holding for a declaration of the right of such person.

This corresponds to section 122 of the Act of 1926. On a plain reading, the section applies to two kinds of disputes, *viz.*, where the landholder plaintiff does not admit that a person claiming to be the tenant of a holding is the tenant or where as between rival claimants to a holding, he does not know which of them is the tenant.

This section clarifies a possible obscurity in the Act of 1926. Occasion will arise for the operation of the section when the landholder suing does not admit the status of the defendant as tenant but looks upon him as a would-be trespasser. If such defendant is in possession the proper remedy would be a suit under section 180 for possession; but if he is not in possession a suit for declaration under section 60 will lie. Before the enactment of this section, where the landholder denied the right of a person claiming to be the tenant, there being no rival tenant, the suit did not lie in the Revenue Court.<sup>2</sup> But now it does.

<sup>1</sup> *Surja v Girand Singh*, XIX U. D 164=1938 R D 935.

<sup>2</sup> *Ranjit Rae v Juthan Rae*, 1937 A L J 1092=1937 R D. 546=1937 A. I. R All 633=XVIII U. D (H C) 230.

Under the repealed Acts in Agra such a suit was held to be within the sphere of Civil Court jurisdiction.

The following will serve as examples. A tenant dies and *A* claims his holding as heir. The landholder maintains that the tenant died heirless. He may now sue for a declaration that the tenant died heirless and the holding lapsed to him.<sup>1</sup> A suit by a landholder against a person for declaration that he is a mere trespasser on agricultural land is within the section.<sup>2</sup>

A suit by a person alleging himself to be the tenant of a plot that he is the owner of a well therein—both facts being denied by the landholder—is one under section 59 and lies only in a Revenue Court.<sup>3</sup>

A suit having for its object a declaration that the defendant is not the tenant but the actual cultivator is, and the defendant asserts exproprietary rights, is under this section.<sup>4</sup>

A Civil Court cannot determine whether or not a lease has expired and grant a declaration accordingly,<sup>5</sup> nor decree possession to a landholder against a person whom it finds to be a tenant.<sup>6</sup>

If *A* sues *B* as a tenant, the fact that *B* denies the tenancy will not oust the jurisdiction of the Revenue Court. If *B* sets up a proprietary title in himself, section 286 shows that the ultimate decree will be that of the Revenue Court, *i. e.*, such court will retain its jurisdiction to the end to make a decree in the case.

If *A* is only a tenant and sues *B* as a sub-tenant, the suit is within the section. The fact that *B* pleads that he, *B*, and not *A* is the tenant-in-chief ought to make no difference, at least under the Act.

Where, however, *A* really alleges *B* to be a trespasser, but says that if the court should find him to be his sub-tenant, it may make that declaration, the Civil Court jurisdiction was held not to be ousted.<sup>7</sup>  
**Contra now**

<sup>1</sup> See *Babu Ram v. Ram Narain*, 1930 A. L. J. 1251=14 R. D. 656 for a case under the Act of 1926. The ruling will hold good where the tenant died before the commencement of the Act

<sup>2</sup> See *Naram Rao v. Kalka*, 11 U. D. 747; *Muzaffur Ahmad v. Murtaza Husain*, XIV U. D (H. C.) 81, where the proper forum was held to be the Civil Court, and not the Revenue Court as now.

<sup>3</sup> *Hira Singh v. Chandan Singh*, 54 All 877=1932 A. L. J. 815=1932 A. I. R. All. 663=16 R. D. 497=XIII U. D. (H. C.) 170=13 L. R. Rev. 342

<sup>4</sup> *Het Kuar v. Tej Pal Singh*, 1933 A. I. R. All. 564=1933 A. L. J. 1286=14 L. R. Rev. 617, 835=XIV U. D (H. C.) 87.

<sup>5</sup> *Chhab Narain v. Sri Krishna Din*, 12 O. C. 164

<sup>6</sup> *Muhammad Abul Hasan Khan v. Prag*, 15 A. L. J. 113=20 O. C. 8 (P. C.) ; *Sheo Ratan v. Abbas Bandi*, 4 O. C. 175.

<sup>7</sup> *Ali Jafar v. Phulwanta*, 13 A. L. J. 843.

Under section 95 of Act 2 of 1901, it was held that where *A*, alleging himself to be the tenant-in-chief, sued to eject *B* as his sub-tenant and ejected him, the zamindar could not sue for a declaration that *B* and not *A* was his tenant-in-chief, as the tenancy of *A* was not admitted and the landholder had sided with *B* in the ejectment suit.<sup>1</sup> This ruling loses its force under section 60, for the decision between *A* and *B* does not bind the landholder unless he be, under the circumstances, held to be a defendant in the case, and his case would be that a doubt exists whether *A* or *B* is his tenant, and that in his opinion *B* is his tenant.

A suit by a landholder that *A* is not the adopted son of a deceased occupancy tenant, and describing *A* as a non-occupancy tenant, is not cognisable by a Civil Court.<sup>2</sup>

Where with the consent of the lambardar a daughter was entered as a co-tenant with the Hindu widow heiress to an occupancy holding and on partition of the village the holding fell into the lot of another proprietor, the latter may sue for a declaration that the widow alone is the tenant.<sup>3</sup>

A suit under section 60 is item No. 4 of Group B of the 4th Schedule and lies in the court of an Assistant Collector of the first class with a right of appeal to the Commissioner.

There is no period of limitation and the court-fee payable is 8 annas.

**61.** At any time during the continuance of a tenancy, either the landholder or the tenant may sue for a declaration as to any of the matters specified in sub-section (2) of section 55.

Suit as to class of  
tenancy, etc.

This section reproduces in effect section 123 of the Act of 1926. It has to be read with section 55, the matters in which were enumerated in section 123.

The suit mentioned in the section is open both to landholders and tenants. If the plaintiff is neither, he cannot resort to the section, but may have a Civil Court remedy in respect of any of the matters mentioned in section 55.<sup>4</sup>

In order to be able to bring a suit to determine the class to which the tenant belongs, there should be no dispute as to the fact that the person

<sup>1</sup> *Suraj Lal v. Madho Prasad*, 9 L. R. Rev. 1=IX U. D. 1=1927 R. C. 130=22 R. D. 82.

<sup>2</sup> *Jagan Nuth v. Balwant Singh*, 41 All. 692=20 A. L. J. 570=8 Rev. and Cr. L. J. 255=1922 R. 301; *Brj Raj v. Lalla*, V U. D. 467=4 L. R. Rev. 238=1923 R.C. 167; *Shoembar Singh v. Shoembar Singh*, 50 A. 55=1927 A. I R All 730=25 A L J. 799=100 I C. 128=8 L. R. Rev. 211=VIII U. D (H. C) 191=1927 R C. 238.

<sup>3</sup> *Tuleshwar v. Ketki*, XVII U. D. 291=1936 R. D. 39

<sup>4</sup> *Ali Ahmad v. Mehrban Ali*, 1938 A. L. J. 1076

suing or sued is the tenant of the holding concerned. If there is such a dispute, section 59 or section 60 or section 180 provide adequate relief.

Should the person said to be such tenant be in possession? Where the tenant sues, he must be in possession,<sup>1</sup> or must have been in possession within the period before the expiration of which he could have sued for wrongful ejectment or eviction, for if it is found that he was not in possession within such period his suit must fail.<sup>2</sup> If he has been out of possession for more than such period he cannot sue at all either under section 180, or section 183, or under this section,<sup>3</sup> for he would not be suing during the continuance of the tenancy. If he is not in possession and another person is, the court cannot give him a declaration that he is the tenant of the holding, even if the landholder accepts the position that the plaintiff is the tenant,<sup>4</sup> for if the landholder has any grievance against this state of things he can sue under section 60. If the plaintiff's position as tenant is disputed, section 61 will not apply and a suit under section 59 may be the proper remedy.

Where the tenant of a holding is the defendant, the suit will be based on the assumption that he is in possession. See also note 3 to section 59 *supra*.

The object of the section is to enable the court to ascertain the existing arrangements between a landholder and his tenant, and not to make a new contract for parties between whom no contract was in existence at or before the date of the suit.<sup>5</sup> Nor can an application under colour of asking for the determination of the incidents of a tenancy really seek to set aside the lease under which the tenant came into possession.

**2. Suit.**—A suit under this section falls in Group B (No. 5) of the Fourth Schedule. It is cognisable by an Assistant Collector of the first class and an appeal from his decision lies to the Commissioner. The only limitation for such a suit is that it must be brought during the continuance of the tenancy. The court-fee payable is eight annas. As to *continuance of tenancy* see note 2 to section 59 and as to *jurisdiction*, see note 7 to section 59.

A suit for any of the matters referred to in this section *i. e.* specified in subsection (2) of section 55 is within the exclusive cognisance of Revenue Courts. For instance, a suit for declaration that the plaintiffs are tenants at fixed rates and not occupancy tenants, is within the exclusive cognisance of Revenue Courts,<sup>6</sup> so also, that plaintiffs are

<sup>1</sup> *Janki v. Doton Singh*, B. R. 5 of 1885; *Sheo Barti v. Hansraj*, XVII U. D. 333=1936 R. D. 481; *Govind Ram v. Mahhan Lal*, XIV U. D. 13=14 L. R. Rev. 27=17 R. D. 23, *Contra*, *Harnam v. Phunda*, III U. D. 642=1 L. R. Rev. 9.

<sup>2</sup> *Bindeshari v. Mahadei*, XVI U. D. 415.

<sup>3</sup> *Rajpat Singh v. Sadha*, XVI U. D. 679=1935 R. D. 565.

<sup>4</sup> *Lutawan v. Bishwa Nath*, XVII U. D. 269=1936 R. D. 484.

<sup>5</sup> *Debendra Kumar v. Narain Dat*, 19 Cal. 182. (F. B.)

<sup>6</sup> *Sadik Ali v. Liaquat*, 7 A. W. N. 214; *Baldeo v. Bhola*, 2 A. W. N. 96.

permanent tenureholders,<sup>1</sup> or that defendants are tenants-at-will,<sup>2</sup> or tenants of plaintiff's *sir*,<sup>3</sup> or for a declaration of the area and boundary of plaintiff's holding.<sup>4</sup>

The mere fact of a person suing under this section does not show that he is a tenant of the other party.<sup>5</sup>

**3 Clause (a) of section 55.**—If the existence of a tenancy between the plaintiff and the defendant is admitted or is not in dispute, the only question that the court has to decide is the nature, class, or incidents of the tenure: and the suit is within the exclusive jurisdiction of Revenue Courts.<sup>6</sup> When an occupier of land sues for the determination of his class of tenure he must expressly or impliedly allege a tenancy, or this section will not apply. For instance, a rent-free grantee is not a tenant, and a suit by him for a declaration that he is entitled to hold certain land, as such grantee, and for the determination of the character of the tenure of such land, is not within this section.<sup>7</sup>

A Civil Court cannot declare that any entry made by a settlement officer that *A* was an occupancy tenant was wrong and that *A* was not a non-occupancy tenant.<sup>8</sup>

Where a notice of ejectment is cancelled on the ground that the tenant is more than a mere tenant at will, *e.g.*, a tenant with a right of occupancy, the landlord cannot sue for possession in a Civil Court.<sup>9</sup>

It was held in a suit by *A* to contest a notice of ejectment issued by *B*, that *A* was a tenant with a right of occupancy. *B* now sued *A*'s son in the Civil Court for possession of the lands, alleging that *A* had been a tenant not holding on special terms. No objection to jurisdiction was taken in the first court, which dismissed the suit, but the court of first appeal decreed proprietary possession of the land to *B*. On further appeal, it was held (1) that the Civil Court had no jurisdiction to entertain the suit; (2) that the suit being governed by section 124B, of the Oudh Act, the plea of jurisdiction could not be entertained in appeal, and the court of appeal was bound to dispose of the appeal independently of the question of jurisdiction; (3) that if the suit had been brought in a

<sup>1</sup> *Jai Gopal v. Radha Prasad*, 14 A. W. N. 81.

<sup>2</sup> See *Antua v. Ghulam Muhammad*, 6 All. 110=3 A. W. N. 239; *Maharajah of Benares v. Angan*, 4 A. W. N. 275.

<sup>3</sup> *Mahesh Rai v. Chundar Rai*, 13 All. 17=10 A. W. N. 235; *Sakina v. Swarath*, 15 All. 115=13 A. W. N. 11. *Contra*, *Kaleshar v. Girdhari*, 7 All. 338=5 A. W. N. 31.

<sup>4</sup> *Jadu Nandan Singh v. Bechan Koeri*, 1929 A. I. R. All. 442=116 I. C. 870=X U. D. (H. C.) 219=12 L. R. Rev. 278=13 R. D. 527.

<sup>5</sup> *Lala Singh v. Raghubar Narain*, 13 R. D. 223=116 I. C. 275.

<sup>6</sup> *Sita Ram v. Chait Ram*, V U. D. (H. C.) 181.

<sup>7</sup> *Ajudhia Prasad v. Sheodin*, 6 All. 401=4 A. W. N. 73.

<sup>8</sup> *Ugarsen Singh v. Ram Dut*, 1 O. C. 210; *Sarabjit Singh v. Madho Singh*, 4 O. C. 175.

<sup>9</sup> *Afsal-un-nissa*, Sel. Ca. No. 135, so also Sel. Ca. No. 53.

Revenue Court under section 108 (4), the status of *A* and his son as occupancy tenants would have been *res judicata*; (4) that hence the Civil Court of appeal should dispose of the appeal as if the question of the status was *res judicata* and dismiss the suit; and (5) that even if *B* did not hold on special terms as alleged by *B*, his son could be ejected only on one of the grounds mentioned in section 62 of the same, and since none of the grounds were mentioned, the suit should be dismissed.<sup>1</sup>

For some cases see note 7 to section 59.

In a case under this clause, the court can try the question whether the defendant (last male tenant's widow) remarried and thereby lost her right.<sup>2</sup>

A suit for a declaration that the defendant is a mere thekadar was held to be one of the nature contemplated by the section.<sup>3</sup>

**4. Clause (b) of section 55** The situation, area, number, etc.—In a suit under section 61 a proprietor is entitled to a declaration that his tenant is the occupancy tenant of a certain limited area at a certain rent and not of the whole area recorded in his name as occupancy land, although such decision will not debar the tenant, in any future suit, from claiming occupancy rights in the rest of the area.<sup>4</sup>

**5. Clause (c) of section 55** Rent payable in respect of the holding.—A Civil Court cannot entertain a suit to determine that a certain rent is payable or is payable in kind only,<sup>5</sup> or in cash only,<sup>6</sup> or that an additional rent is payable,<sup>7</sup> or for enhancement of rent.<sup>8</sup>

The section does not apply where rent has never been fixed or agreed upon.<sup>9</sup>

A suit for a declaration that no custom exists empowering the landholder to take fruits or wood or use of plough etc. from raiyats, is not under clause (c), and lies in a Civil Court.<sup>10</sup>

The court cannot fix a new rent,<sup>11</sup> specially when the suit is not under section 94 but under this section.<sup>12</sup>

<sup>1</sup> *Lachhman v. Parsotam Das*, Sel. Ca No. 254.

<sup>2</sup> *Bhikari Das v. Janki*, B. R. 29 of 1910. See also cases cited in note 3 to section 59

<sup>3</sup> *Parmeshwar Lal v. Mahomed Abul Hasan*, 14 O. C. 335.

<sup>4</sup> *Khawar Husain v. Rajib Ali*, XII U D 143.

<sup>5</sup> *Jagannath v. Bhagwandas*, 7 A. W. N. 266.

<sup>6</sup> *Baines v. Mahomed Ali*, 2 N. W. P. 307.

<sup>7</sup> *Sri Narain v. Rameswar*, 6 C. W. N. 259.

<sup>8</sup> *Rajeshwar Prasad v. Barta*, 21 Cal 807.

<sup>9</sup> *Sanwal Singh v. Malkhan Singh*, 3 Rev. and Cr. L. J. 93=II U. D. 363.

<sup>10</sup> *Sheo Ambar Ahir v. Collector of Azimgarh*, 34 All. 358=14 I. C. 158.

<sup>11</sup> *Ram Charan v. Karim un-nissa*, 37 All. 12=12 A. L. J. 1131=26 I. C. 121; *Ram Prasad v. Mathura Rai*, 29 I. C. 604=I U. D. 212; *Jalpa Prasad v. Munna*, II U. D. 214=3 R. D. 115; *Bhagwan Din v. Jagannath Singh*, III U. D. 411=2 U. P. L. R. (B. R.) 147=7 Rev. and Cr. L. J. 77=4 R. D. 225; *Deosaran Rai v. Dwarka Rai*, XX U. D. 318=1939 R. D. 27.

<sup>12</sup> *Jadubans v. Shao Ram*, 11 L. R. Rev. 346=XII U. D. 151; *Mangal Chand v. Raham Ali Khan*, XX U. D. 175=1939 R. D. 162.

The Board has ruled that no rent can be fixed under the clause where none is payable; but it may be fixed where rent is payable.<sup>1</sup>

A suit lies for a declaration that the real rent is Rs. X and not Rs. Y as recorded in the paper; and if the evidence and receipts produced show the real rent to be Rs. X only, the court will decree the suit.<sup>2</sup>

Under section 61 a suit lies by a zamindar to get a declaration as to rent, which indicates a sum payable under the Benares Family Domains Act, which is to be paid by a tenant under the terms of his lease.<sup>3</sup>

If the case of the parties is that a rent was fixed, each naming a different rate, the Commissioner in appeal cannot find that no rent was fixed but should give a declaration on the evidence on the record.<sup>4</sup>

Where the real rent is higher than that entered on account of collusion, a declaration may be given as to the higher rent although the lower rent had been received in ignorance for the collusive nature of the entry.<sup>5</sup>

Where the rent is said to be higher than that entered in the *khatauni* for a number of years and no lease or *kabuliat* is produced, the zamindar must strictly prove the higher rent.<sup>6</sup>

Where the rent of an exproprietary tenant has been fixed by agreement and accepted by the court under section 36 L. R. Act, and in an arrears of rent case, he failed to get round that agreement and decision, he cannot sue under this section read with cl. (c) of section 55.<sup>7</sup>

Where in a suit under the section the court has declared a rate of rent as payable by the tenant a subsequent suit for rent at a higher rate is not maintainable.<sup>8</sup>

Where the recent settlement entry shows half the produce as the rent, an entry at the previous settlement recording less rent with respect to a few holdings only will not override the former.<sup>9</sup>

Where the area of a holding has been reduced by surrender a suit may be brought under this section for declaration of rent; and if the

<sup>1</sup> *Ram Charan v. Har Prasad*, VI U. D. 473=7 L. R. Rev. 182=12 Rev. and Cr. L. J. 189=1926 R. C. 153=9 R. D. 34; *Nuthu Lal v. Roshan Lal*=II U. D. 494; *Hoti Lal v. Chuttan Lal*, 42 I. C. 998 (A)=4 Rev. and Cr. L. J. 1=51 I. C. 15.

<sup>2</sup> *Muhammad v. Muh. Iqtidar Ahmad Khan*, XIV U. D. 55=14 L. R. Rev. 245.

<sup>3</sup> *Nar Singh Prasad Singh v. Puranmashi*, 1936 A. L. J. 282=1936 A. I. R. All. 459=XVII U. D. (H. C.) 110=1936 R. D. 201=161 I. C. 762.

<sup>4</sup> *Mohan Lal v. Govinda*, X U. D. 150; *Ram Sujawan v. Gunesb Prasad*, XIX U. D. 51=1938 R. D. 96.

<sup>5</sup> *Devi Singh v. Raj Bahadur*, XIV U. D. 349=14 L. R. Rev. 675.

<sup>6</sup> *Chotey v. Mahobbe Ali Khan*, XVIII U. D. 197=1937 R. D. 376

<sup>7</sup> *Harkho Kumari v. Jang Bahadur Singh*, 15 L. R. Rev. .3.

<sup>8</sup> *Ishri Singh v. Kalwa*, 57 I. C. 683=7 Rev. and Cr. L. J. 11.

<sup>9</sup> *Zamindar v. Kamla Prasad*, X U. D. 194.

patwari's entry showing a proportionate rent for the reduced holding has not been objected to, a suit for arrears at the reduced rent cannot be dismissed because a competent court has not fixed it.<sup>1</sup>

A suit under this section read with clause (c) of section 55 may be brought in respect of a grove.<sup>2</sup>

6. **Jurisdiction.**—See note No. 7 to section 59 as to suits by rival claimants to a holding. Where in a suit which is within the exclusive jurisdiction of a Revenue Court that court has decided a matter in issue which properly and substantially arose before it, and which was necessary to enable it to make the decree it did, that decision cannot be challenged by an independent suit in a Civil Court. A sues to eject B as a tenant from year to year. B sets up an unexpired lease granted by A's agent. A denies the authority of the agent to grant the lease. The Revenue Court decides that the lease was granted by A's agent within the scope of his authority and refuses ejectment. A cannot sue B in a Civil Court for a declaration that the lease is invalid.<sup>3</sup>

So, if the plea being accepted, the suit was dismissed.<sup>4</sup>

While A's suit to eject B as his tenant or subtenant is pending in a Revenue Court, a Civil Court cannot entertain a suit by B for a declaration that he is not a tenant or subtenant of A.<sup>5</sup>

The question is sometimes confused by the plea of *res judicata*. It is obvious that the decision of a Revenue Court cannot be set up as *res judicata* in a Civil Court, unless by express enactment the former is given the force of a Civil Court decree, simply because the Revenue Court would be incompetent to try the civil suit. Besides, such a plea connotes that the Civil and Revenue Courts have concurrent jurisdiction in the matter, whereas by section 242, the Revenue Court has exclusive jurisdiction in matters of the nature specified in the fourth schedule and, in respect of which a suit or application might be brought or made in a Revenue Court. *Kanhai Ram v. Durga Prasad*<sup>6</sup> is an instance. There, A sued to eject B as his subtenant in a Revenue Court and, in spite of B's objection that he and not A was the tenant-in-chief, obtained a decree. B then sued A in the Civil Court for a declaration that he was the tenant-in-chief and for possession. There is not the least doubt

<sup>1</sup> *Bhola Singh v. Ram Gharib*, XI U. D. 177=14 R. D. 630.

<sup>2</sup> *Muh. Ismail v. Mathura*, VII U. D. 82=10 R. D. 440=7 L. R. Rev. 101=12 Rev. and Cr. L. J. 109=1926 R. C. 169.

<sup>3</sup> *Ram Singh v. Rao Girraj Singh*, 37 All. 41=12 A. L. J. 1252=29 I. C. 731.

<sup>4</sup> *Ram Das v. Dubri*, 44 All. 724=20 A. L. J. 606=V U. D. (H. C.) 75. 111=1922 R. C. 111; *Janki v. Debi Shankar*, V U. D. (H. C.) 125=1922 R. C. 429.

<sup>5</sup> *Fateh Singh v. Gopal Narain*, 48 All. 88=23 A. L. J. 941=VI U. D. (H. C.) 553=11 Rev. and Cr. L. J. 301=6 L. R. 206; *Ganga Chamar v. Bindeshri*, 23 A. L. J. 529=VI U. D. (H. C.) 499=11 Rev. and Cr. L. J. 216=6 L. R. Rev. 173=1925 R. C. 361, but see *Anur v. Govind*, 47 All. 616=23 A. L. J. 449=VI U. D. (H. C.) 510=11 Rev. and Cr. L. J. 232=6 L. R. Rev. 168, *Contra*, *Shoo Bharose v. Pandohi*, 18 I. C. 220 (single Judge).

<sup>6</sup> 37 All. 223=13 A. L. J. 278=27 I. C. 913.



that but for the prior revenue litigation, such a suit would under Act II of 1901 have been maintainable only in a Civil Court. Instead of pleading that the Revenue Court had exclusive jurisdiction to try the suit for ejectment, and, in making its decree for ejectment, it had to find, as a necessary and substantial fact, that *B* was *A*'s subtenant, and therefore its decision could not be reviewed by a Civil Court, defendant set up the Revenue Court decision as *res judicata*, which it could not be and hence lost a good case. A plea of the nature indicated above was set up in *Ram Singh v. Rao Girraj Singh*<sup>1</sup> and it met with success. *Balhadur v. Sumaru*<sup>2</sup> is another instance of an inopportune plea of *res judicata*. There, the zamindar granted a lease of some plots to *B* and then another lease of the same plots to *A*, part of the term of which was concurrent with that of the first lease. *A* brought a suit for arrears of rent against *B* and in spite of *B*'s plea that he was the tenant obtained a decree. *B* then sued *A* in a Civil Court for declaration of his right and possession. The plea of *res judicata* was set up and rightly disallowed.<sup>3</sup>

If the Revenue Court decides that *B* is not the subtenant of *A*, it should dismiss the suit of *A* for the ejectment of *B*. Any observation by it that *A* and *B* are co-sharers in the tenancy will not bar a civil suit by *A* to eject *B* as a trespasser.<sup>4</sup> The case is different if the Revenue Court held that *B* was the tenant-in-chief and *A* came to the Civil Court to eject *B* on the ground that by denying his title he has become a trespasser.<sup>5</sup>

Four Mahomedan brothers owned a holding. On the death of one of them, his widow sued under section 95 of the Act of 1901 to be declared a tenant of the holding of her husband. The Revenue Court dismissed the suit. A civil suit against her husband's brother for declaration of right and possession was held maintainable and not barred by *res judicata*.<sup>6</sup> The suit under section 95 was presumably against the landholder to which her husband's relations were impleaded. The real decision was between her and the landholder.

**62.** A suit may be instituted under the provisions of section 59, section 60, or section 61 in respect of a number of holdings provided that the parties are the same.

Single suit in respect of several holdings.

This is new and will be found very useful. A number of holdings may be the subject of a suit under section 59, 60, or 61, provided the parties are the same. What the inartistically and badly drafted section means is that *A* may sue *B* under sections 59, 60 or 61 in respect of several holdings, in respect of each of which the relation of landholder and tenant exists between them.

<sup>1</sup> 37 All. 41.

<sup>2</sup> 13 A. L. J. 295=27 I. C. 914.

<sup>3</sup> So in *Mukh Ram v. Chajju*, 17 A. L. J. 646=50 I. C. 734=5 R. and Cr. L. J. 149=1 U. P. L. R. (A.) 74.

<sup>4</sup> *Tulshi v. Mohan*, 35 I. C. 302=2 R. and Cr. L. J. 249.

<sup>5</sup> *Narain Singh v. Govind Ram*, 8 A. L. J. 431=9 I. C. 1032

<sup>6</sup> *Fajju v. Gufrulla*, A. L. J. for 1912, notes p. 4.

**63.** When land claimed by a tenant as his holding or as being under his cultivation is also claimed by the landholder as being held by him as his *sir* or *khudkasht*, either the landholder or the tenant may sue for a declaration of his status.

The section is new, and fills a gap which existed under the repealed Acts.

The use of the word tenant shows that the tenant's position as tenant of some land is not in dispute. The dispute would be whether the land claimed is in his holding or under his cultivation, or whether it is the *sir* or *khudkasht* of the landholder. The expression *under his cultivation* would bring under the section suits as to land not originally comprised in the holding, but which has been added by alluvion or has been encroached upon by the tenant. Suits as to land said to have been taken away by diluvion and then alluviated, or to have been taken away from a holding by the landholder's encroachment will also be under the section.

The section will also comprise suits in which a landholder cultivates the lands in the holding of a tenant without a contract of subtenancy. Under the earlier Acts, the tenant sued the landholder alleging a subtenancy or as a trespasser. Should the tenant's plaint show that the landholder claims the land as his *sir* or *khudkasht*?

**Suit.**—The suit is open both to landholder and tenant. It is No. 6 in Group B of Schedule IV. There is no limitation for it, unless the tenancy claim is barred under section 45, *e. g.*, by adverse possession. The plaint will pay a court-fee of eight annas. The suit will be triable by an Assistant Collector of the first class, with a right of appeal to the Commissioner.

**64.** If, in the course of a suit under the provisions of any of the last five preceding sections it is proved by affidavit or otherwise—

(a) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops, in order to defeat the ends of justice,

the court may grant a temporary injunction and, if necessary, appoint a receiver.

1. This section extends the provisions of Order 39, Rule 1 of the Code of Civil Procedure as modified by the section to suits under sections 59 to 63, in respect of any property, *e. g.*, a house or shed, trees or crops standing on the land in dispute.

Comparing this section with Order 39, Rule 1, it is apparent that intended or threatened sales in execution of decrees cannot be stopped under the section, which is confined to threatened or supposed waste, damage or alienation by any party, *i. e.*, voluntary alienation; and that under clause (b) the object of a proposed removal or disposal should be to defeat the ends of justice and not to defraud defendant's creditors; and that such threatened or intended removal or disposal may be by any party to a suit and not by the defendant only.

2. **Proved by affidavit.**—An affidavit making out a ground in clause (a) or (b) should accompany an application for a temporary injunction. Necessarily the application must be first made to the court in which the suit is pending,<sup>1</sup> and a *prima facie* case of a substantial loss should be made out.<sup>2</sup>

An affidavit ought to be specific and definite that one of the events mentioned in clause (a) or (b) is likely or is reasonably apprehended to happen *e. g.*, that any property, crops or trees standing on the land in dispute is threatened or intended to be disposed of, or is in danger of being wasted.<sup>3</sup> A mere vague allegation to that effect will not do.<sup>4</sup>

3. **Some property, trees or crops.**—Must be standing on the land in dispute, *i. e.*, on the holding about which the suit has been filed or land claimed by a tenant as his holding or under his cultivation and also claimed by the landholder as his *sir* or *khudkasht*.

4. **Wasted, damaged or alienated.**—Trees or crops may be wasted or damaged by being cut down or allowing cattle to feed on them. Land in a holding may be wasted or damaged by allowing pits to be dug or bricks to be made. A building standing on the land in dispute will be a case of waste or damage.<sup>5</sup>

*Alienated, e g.*, let, sublet, mortgaged or sold.

5. **The court may grant etc**—The court has discretion in the matter, which it must exercise on judicial principles. This implies that from the affidavit filed the court must be satisfied that the applicant has a *prima facie* case and the balance of convenience requires that an injunction should be granted<sup>6</sup> and that a serious or fair question is to be tried,<sup>7</sup> and that injury is likely to be caused to the applicant.<sup>8</sup> The

<sup>1</sup> *Hansraj v. Nand Ram*, 17 A. W. N. 197.

<sup>2</sup> *Sundar Singh v. Ram Saran Das*, 81 I. C. 322.

<sup>3</sup> *Durga Das v. Nabin Chandra*, 61 Cal. 814.

<sup>4</sup> *Raja Ram v. Dhanu Das*, 2 A. L. J. 601.

<sup>5</sup> See *Israel v. Shamsheer*, 41 Cal. 436.

<sup>6</sup> *Brahmachari v. Uma Drug Co.*, 43 C. L. J. 406=95 I. C. 667; *Kalidas Mukerji v. Probal Chandra*, 17 C. W. N. 964=18 I. C. 394.

<sup>7</sup> *Sheodhan Prusada Singh v. Ram Sarup Singh*, 7 P. L. J. 537=96 I. C. 123; *Chandra Dat v. Padmanand*, 22 Cal. 459.

<sup>8</sup> *Moh. Ikram Khan v. Moh. Bakar*, 1935 A. L. J. 139.

court in granting an injunction will first see whether there is a *bona fide* contention between the parties, and then on which side, in the case of the applicant obtaining a successful result in the suit, will be the balance of convenience, if the injunction did not issue, bearing in mind the principle of retaining immovable property *in status quo*.<sup>1</sup>

Where the opposite party is in possession under a claim of right, injunction will not be granted to the applicant who is out of possession, unless threatened injury will be irreparable.<sup>2</sup>

For some other cases see *Singara Coal Syndicate v. Indra Nath*,<sup>3</sup> *Darab Kuar v. Gomti*.<sup>4</sup>

The court has power to appoint a receiver.

A question that has already been tried out and finally decided is not a serious or fair question to be tried in the suit.<sup>5</sup>

6. A temporary injunction cannot be issued to one not a party,<sup>6</sup> and not to a court, but only to a party.<sup>7</sup>

#### *Improvements.*

65. (1) A permanent tenure-holder, a fixed-rate tenant, an occupancy tenant in Oudh or a tenant holding on special terms in Oudh may make any improvement.

Right of certain tenants to make improvements.

(2) An occupancy tenant in Agra, an ex-proprietary tenant or a hereditary tenant may make any improvement, except that he may not make an improvement mentioned in sub-clause (d) or sub-clause (e) of clause (ii) of sub-section (8) of section 3, unless there is a local custom entitling him to do so or he has obtained the written consent of the landholder.

This corresponds to section 109 of the Act of 1926 and extends the right to make improvements to all tenants except non-occupancy tenants. Under the Act of 1926, an exproprietary or occupancy tenant could make any improvement except planting trees, making a tank or erecting a building of a permanent character, and these latter acts he could do under the authority of a local custom or with the written consent of the landholder; statutory tenants in either province had very limited rights to make improvements and no other tenant could make an improvement without the written consent of the landholder.

See section 3 (8) for meaning of improvements. They include now :—

(i) a dwelling house or a cattle-shed or a store house on the holding ;

<sup>1</sup> *Israil v. Samser*, 41 Cal. 636.

<sup>2</sup> *Begg Dunlop & Co. v. Satish Chandra*, 46 Cal. 1001.

<sup>3</sup> 10 C. W. N. 173.

<sup>4</sup> 22 All. 449.

<sup>5</sup> 17 C. W. N. 964=18 I. C. 394.

<sup>6</sup> *Election Officer v. Abdul Ghani*, 79 I. C. 233 ; *Ram Sunder v. Ram Dhyani*. 3 Pat L. J. 456.

<sup>7</sup> *Raja Ram v. Dharm Das*, 2 A. L. J. 601.

- (ii) any work which adds materially to the value of the holding *etc*, which includes the construction of tanks for the storage of water for agricultural purposes and other objects mentioned.

Now a permanent tenant holder, a fixed rate tenant, an occupancy tenant in Oudh or a tenant holding under a special agreement in Oudh may make any improvement. An occupancy tenant in Agra, an exproprietary tenant or a hereditary tenant in other province may make any improvement except those mentioned in section 3 (8) (ii) (d) or (e) and even those he can make under the authority of a local custom entitling him to make the improvements, or of the written consent of the landholder. Sub-clause (d) of clause (ii) of section 3 (8) relates to the erection in the immediate vicinity of the holding otherwise than on the village site, of buildings other than a dwelling house on the holding for his own occupation or a cattle-shed or a store-house on the holding. In Oudh, under section 23 of the Oudh Act, every tenant having a right of occupancy or holding under a special agreement or decree of Court was entitled to make an improvement (as defined in section 26 of the Oudh Act) on his holding, but could not plant trees on his holding without the written consent of the landlord, and statutory tenants had a limited right of making improvements.

**66.** No non-occupancy tenant shall make any improvement unless he has obtained the written consent of his land-holder.

Right of non-occupancy tenant to make improvements.

This section corresponds to section 112 of the Act of 1926.

It will be noticed that a *sir* tenant, who is not a hereditary tenant but is a non-occupancy tenant is prohibited from making any improvement, even the construction of a well, except with the written consent of his landholder.

A tenant of *sir land* or a subtenant is a non-occupancy tenant and cannot make any improvement without the consent of the landholder. If a sub-tenant has planted a grove with the consent of the tenant-in-chief, the latter can not eject him as a yearly tenant.<sup>1</sup> A guava grove planted by a sub-tenant with the consent of the tenant-in-chief and of the landlord while Act II of 1901 was in force was an improvement, but such a plantation did not make him a groveholder immune from ejectment.<sup>2</sup> No other non occupancy tenant can make any improvement, and if he does, he cannot get compensation *e. g.*, if he plants a grove,<sup>3</sup> or puts up a house.<sup>4</sup> A groveholder replacing fallen or

<sup>1</sup> *Jagat Narain v. Guuri* B R 7 of 1933=XIV U D. (B R ) 37=14 L. R. Rev. 527.

<sup>2</sup> *Sheo Adhar v. Mangala*, XVI U. D. 14

<sup>3</sup> *Buldeo v. Harnandan*, 2 Rev and Cr L. J. 266=II U D 123=3 Rev and Cr. L. J. 70=3 R D. 33 ; *Nain Singh v. Shafnat Ali*, II U D. 282=3 R. D. 137.

<sup>4</sup> *Amrit v. Mahadeo*, B R 2 of 1919=5 Rev and Cr. L. J. 82=III U. D. 27

decayed trees is not making any improvement.<sup>1</sup> Any other transferee making an improvement will not be entitled to get compensation for it. No order can be passed for the removal of materials of unauthorised improvements or of trees.<sup>2</sup>

A subtenant of a subtenant cannot plant trees with the consent of the subtenant.<sup>3</sup>

**67.** No landholder other than a landlord shall give consent to the making of an improvement which he is not himself entitled to make.

Only certain landholders to give consent

This section is new and defines a mere landholder's power to consent to an improvement. The necessity for consent is imposed by section 65 (2) in the case of Agra occupancy tenants and exproprietary and hereditary tenants in both provinces when contemplating an improvement mentioned in section 3 (8) (i) (d) and (e) and by section 66 in the case of non-occupancy tenants. A mere landholder cannot give consent to the making of an improvement which he himself is not entitled to make either with or without the tenant's consent. A landholder may make an improvement with the tenant's consent or without it as mentioned in section 71 in respect of sinking a well, or on land in the holding of a non-occupancy tenant.

**68.** Nothing in this chapter shall entitle a tenant or a landholder to make an improvement on, or detrimental to, any land which is not included in the holding to be benefited by such improvement unless he has obtained the written consent of the landlord or of the mortgagee in possession or of the under-proprietor or of the permanent lessee, as the case may be, and of the tenant, if any, of such land.

Restrictions on improvements.

1. The section corresponds to section 113 of the Act of 1926 and provides a check on tenants' or landholders' power to make improvements.

It also indicates a case where a mere landholder cannot make an improvement on his land which would affect the value of some other land except with the written consent of some of the persons interested in it.

2. **On or detrimental to any land etc.**—Land here means land not included in the holding to be benefited. Such land may not belong to or concern the landholder. Written consent of the landlord and of the tenant if any will justify an improvement which may diminish the value of some other land in respect of which he is landlord or tenant so, the written consent of the mortgagee in possession,

<sup>1</sup> *Ambi Sahai v. Natha*, 55 All 73—1932 A. L. J. 1026

<sup>2</sup> *Babu Ram v. Maha Lachmi Rai*, IV U. D. 230—6 R. D. 430.

<sup>3</sup> *Debi Prasad v. Nasir Khan*, 14 L. R. Rev. 94—XIV U. D. 38.

or of the under-proprietor, or of a permanent lessee, and of the tenant, if any, of the land.

The words *on any land* mean land whether in or outside a holding in which a work would be an improvement according to section 3 (8).

**3. The landlord etc.**—In section 113 of the Agra Act the word *landlord* was used throughout. Now the result will be that the consent of a mere landholder who is not the landlord will not suffice. Consent of the mortgagee in possession will do, but mortgagee from whom? Surely, not the mortgagee of a landholder who is not the landlord. Under-proprietors and permanent lessees of the land may also give consent. In any case, consent of the tenant of the land, the value of which may be adversely affected by the proposed improvement, is essential.

Where one of 18 zamindars did not consent, it was held that he could be ignored <sup>1</sup>

**69.** A tenant making an improvement or planting trees, shall in the absence of a written agreement to the contrary, continue to be liable to pay the full rent of the holding.

Liability for full rent.

This section is new and secures to the landholder the full rent, unless he consented in writing to the making of the improvement, or the planting of trees.

The section will prevent a tenant who has done any of the acts mentioned in the section without a written agreement of the landholder from making a claim for abatement or diminution of rent on the ground say, that the productive power of the land has decreased because of what he has so done, or that a part of the land has become a grove.

**70.** A tenant may apply to the landholder for his written consent to the making of an improvement mentioned in clause (i) or sub-clause (d) or sub-clause (e) of clause (ii), of sub-section (8) of section 3, and, except in the case of an improvement mentioned in clause (i) of sub-section (8) of section 3, if the landholder omits or refuses to grant such consent may apply to the assistant collector in charge of the sub-division for permission to make such improvement.

Application for permission when landholder refuses or omits to consent.

1. The section corresponds to parts of section 114 of the Act of 1926 and of section 24 of the Oudh Act. The application for permission should be made not to the Collector but the Assistant Collector in charge of the subdivision.

**2. May apply to the landholder for his written consent.**—Application is needed only in the two cases mentioned in the section and in no others, as a tenant has a right to make improvements in such other cases. Section 65 (2) imposes the necessity of a landholder's written

<sup>1</sup> See *Reshma Bibi v. Bhawani Saran*, 1923 A. I. R. All. 281=IV U. D. (H. C.) 183=8 R. D. 81.

consent in cases under section 3 (8) (ii) (d) and (e). The present section adds to it a case under section 3 (8) (i), and in the latter case, refusal or omission by the landholder will not give a right of application to the Assistant Collector.

See sections 68, 66 as to improvements which a tenant cannot make or may make only with consent.

3 An improvement mentioned in clause (i) of section 3(8), i.e., erection of a dwelling house on the holding by the tenant for his own occupation, or cattle shed or store-house on the holding.

The phraseology of the section does not make for lucidity when placed side by side with section 65 2). Section 65 2) imposes no necessity for the landholder's written consent to an improvement mentioned in section 3(8)(i) and therefore of an application to him to consent, but section 70 speaks of such application, although it is silent as to the step to be taken by the tenant in case of the landholder's refusal or omission. Sections 73 and 74 show that an application to the landholder for his written consent is mentioned in order to enable the tenant to claim compensation when ejected or wrongfully dispossessed.

4 The procedure prescribed is that a tenant must first apply to the landholder for his written consent, and, on his omission or refusal to grant it, must apply except where he wishes to put up a dwelling-house, a cattle-shed or a store-house on the holding, to the Assistant Collector for permission to make the improvement. A tenant cannot, without first applying to the landlord, rush off to the Assistant Collector for permission. What gives that officer jurisdiction to entertain an application for permission is the omission or refusal of the landholder to give a written consent.

5 Notice.—Though not expressly mentioned, notice of the application for permission should be given to the landholder, for his objections have to be considered. The objections open to the landholder are that the improvement proposed is not an improvement as defined in section 3, or is too costly or is for a purpose other than the convenient or profitably use of the holding or that he is himself prepared to make the improvement.

The Assistant Collector is not bound to give effect to the landholder's offer to make the improvement. If he gives effect to it, he will dismiss the application.

If the tenant has not followed the procedure of this section, he will not be entitled to compensation; but this does not mean that he cannot improve his holding.<sup>1</sup>

6. The application is No. 5 of Group D of Schedule IV. There is no limitation and the court-fee payable is that prescribed in the Court Fees Act.

71. (1) A landholder may, with the written consent of the tenant, make an improvement on or affecting the holding of a tenant other than a tenant to whom sub-section (1) of section 65 applies :

Right of landholder to make improvements.

<sup>1</sup> *Raghunandan Singh v. Jarao*, 15 O. C. 170=13 I. C. 564.



Provided that if the landholder is not the landlord he shall not make any improvement which he is not under the provisions of this Act entitled to make :

Provided further that no such written consent shall be required if the tenant is a non-occupancy tenant or if the improvement which the landholder desires to make is a well.

(2) If the tenant omits or refuses to grant such written consent, the landholder may apply to the assistant collector in charge of the sub-division for permission to make the improvement.

(3) A landholder making an improvement on or affecting the holding of any tenant shall be liable to compensate the tenant for any loss which he may cause to the tenant when making it.

(4) If the effect of an improvement made by a landholder is to impair the productive powers of any land held by any tenant from such landholder, such tenant shall, in addition to any compensation which may be awarded to him under sub-section (3) be entitled to such abatement of his rent as the court considers just.

1. The section corresponds to section 29 of the Oudh Act and to section 115 of the Agra Act.

2. Other than a tenant to whom section 65(1) applies, *i. e.*, tenant other than a permanent tenure-holder, a fixed-rate tenant or in Oudh an occupancy tenant or a tenant holding on special terms. In the case of these classes of tenants, a landholder cannot make any improvement on or affecting the holding of the tenant. There is, however, nothing to prevent a landholder and such tenant from agreeing that the former should make an improvement on or affecting the tenant's holding on such terms as may be agreed upon, provided the terms are not inconsistent with the provisions of the Act *e. g.*, section 4(b). These classes of tenants may make any improvement without leave of the landholder.

In the case of other tenants, exproprietary and hereditary in both provinces, occupancy in Agra, a landholder may make a well without any consent of the tenant, but not any other kind of improvement without such consent.

A landholder may make, without the tenant's consent, any improvement on the holding of a non-occupancy tenant. A non-occupancy tenant may be a sub-tenant or a *sir*-tenant who has not acquired hereditary rights. A non-occupancy tenant has no right to make an improvement without the written consent of the landholder.

The landholder who is not the landlord cannot make any improvement which he is not entitled to make under the provisions of the Act. Under section 68 a landholder cannot make any improvement in a manner which may substantially diminish the value of other land, without

the written consent of certain persons who are not tenants of the land improved. There is no other provision of the Act about the matter. We imagine that improvements which tenants may make without the landholder's consent were meant to be included in improvements which landholders are not entitled to make.

3. **Consent** means written consent, or permission of the Assistant Collector in charge of the sub-division to make the improvement. A landholder has first to ask the tenant for his written consent. If the tenant refuses, the landholder may apply to the Assistant Collector for permission. The remarks made under section 70 as to this apply *mutatis mutandis*. That officer may grant or refuse permission after hearing the parties and making such further inquiry as he thinks fit. He may put reasonable restrictions in granting the permission.

The words "affecting the holding" are wide and indicate that a landholder's improvement on any land not comprised in the holding of a tenant and made without his consent may affect the holding of the tenant, provided the work which is said to be an improvement is either executed directly for the benefit of the holding or is after execution made directly beneficial to it.

4. **Sub-section (3)**—This reproduces sub-section (3) of section 115 of the Agra Act, substituting *landholder* for *landlord*. The Oudh Act provided in section 108(9)(d) for a suit for compensation on account of the loss referred to in the sub-section. Now there is no item in Schedule IV corresponding to it.

5. **Sub-section (4)**—Nearly reproduces sub-section (4) of section 115 of the Agra Act, after making necessary changes.

6. The application is No. 6 of Group D of the Fourth Schedule and has to pay court-fee as directed by the Court-Fees Act.

72. (1) The assistant collector to whom an application is made under the provisions of section 70 or section 71 may, after hearing the parties and making such further inquiry as he thinks fit, grant permission to make the improvement subject to such restrictions, if any, as he may deem reasonable, or may refuse permission :

When permission may be granted or refused by assistant collector.

Provided that the assistant collector—

(a) shall not grant permission for a work which—

- (i) is not an improvement as defined in this Act,
- (ii) is too costly for the purpose for which it is intended,
- (iii) is not an improvement which the applicant is entitled to make,

*(iv) requires written consent under the provisions of section 68, unless such consent has been previously obtained.*

(b) may, in the case of an application made under the provisions of section 70, refuse permission if the other party is prepared to make the improvement within a time fixed by the court and may order that if the improvement is not so made the applicant shall be entitled to make it himself.

(2) An order of the assistant collector granting permission to make an improvement shall be deemed to be the written consent of the landholder or of the tenant, as the case may be, to the making of the improvement in the manner specified in such order.

1. This section is new, though a part of it is taken from section 114(2) of the Agra Act. It sets out the grounds on or reasons for which the Assistant Collector may refuse permission on an application by a tenant under section 70 or by a landholder under section 71.

Sub-clause (iv) of clause (a) of sub-section (1) given in italics was substituted by the U. P. Tenancy (Amendment) Act, No. 1 of 1940.

2. Clause (b) authorises the rejection of a tenant's application under section 70, if the landholder is prepared to make the improvement; there ought to be a clause in such order that on the landholder's failure the tenant would be entitled to make the improvement.

3. Sub-section (2) gives the force of written consent of the landholder or of the tenant to an order of the Assistant Collector granting permission.

73. A tenant who has with the written consent of the landholder made an improvement mentioned in clause (i) of sub-section (8) of section 3 or who has made any other improvement which he is entitled to make shall be entitled to compensation in the following cases :

Compensation for improvement made with landholder's consent or by entitled persons.

(a) when a decree or order for his ejectment is passed ;  
or

(b) when he has been wrongfully dispossessed by his landholder and has not recovered possession of his holding :

Provided that except in the case of an improvement mentioned in clause (i) of sub-section (8) of section 3 compensation shall not be payable for any improvement made thirty years or more before the date on which the ejectment is to take effect .

Provided further that a tenant ejected in execution of a decree passed in a suit for ejectment or in pursuance of a notice of ejectment shall not be entitled to compensation for any

improvement begun by him after the date of the institution of the suit or of the application for the issue of the notice which resulted in his ejectment.

1. This section corresponds to section 116 of the Act of 1926. Cf. section 22 of the Oudh Act.

2. Though a tenant has a right to make an improvement of the kind mentioned in section 3(8)(i), even without his landholder's consent, he can not, according to this section, claim compensation for it in any of the events mentioned in clause (a) or (b), unless he had obtained the written consent of the landholder, as he can in the case of any other improvement which he is entitled to make according to sections 65, to 66, 68 66.

Under the Oudh Act, section 108(13) provided for suit for the recovery of compensation for improvements. No such suit is provided for now for either province.

There must be an improvement as defined by the Act (*i. e.*, one which increases the letting value) made by a tenant within his rights.<sup>1</sup>

The period of 30 years runs from the date of completion of the well,<sup>2</sup> and it runs to the date when the ejectment is to take effect. This limit does not apply to a house or cattle-shed or store-house or other constructions for agricultural purposes on a holding.

No compensation can be awarded for improvements made by a proprietor who has subsequently been reduced to the position of a tenant, or by a trespasser.<sup>3</sup>

**74.** A tenant, who has made an improvement mentioned in clause (i) of sub-section (8) of section 3 and who has not obtained the landholder's written consent thereto, shall—

Compensation for certain buildings when erected without land- holder's consent.	clause (i) of sub-section (8) of section 3 and who has not obtained the landholder's written consent thereto, shall—
--	--

(a) be entitled to compensation when he has been wrongfully dispossessed by his landholder and has not recovered possession of his holding, and

(b) when a decree or order is passed for his ejectment, be entitled before the date of delivery of possession, or with the permission of the court and subject to such terms as it may direct before some later date, to sell such improvement to any person with the landholder's written consent or to remove the materials thereof.

1. This section is new and provides for cases not covered by the first part of section 73. It gives a tenant wrongfully dispossessed of his holding

<sup>1</sup> *Tulan v. Mata Din* XVII U. D. 39—1936 R. D. 59.

<sup>2</sup> *Abdul Latif Khan v. Ahmad Husam*, 12 L. R. Rev. 217.

<sup>3</sup> *Mahesh Prasad v. Kesri Singh*, IV U. D. 302—6 R. D. 501; *Malkhan Singh v. Rup Chand*, XIV U. D. 175—14 L. R. Rev. 437.

by the landholder and who has not recovered possession of his holding a right to recover compensation. Section 188(1)(b)(iii) gives him the right to claim compensation for any improvement he may have made, and section 74 refers to the one kind of improvement mentioned in the section. It also gives him a right, when a decree or order for his ejectment has been passed, to sell, prior to the date of delivery of possession or at a later date with the court's permission and with the landlord's consent, such improvement to any person, or to remove the materials of the house. The right to sell is subject to the written consent of the landholder, and the sale must take place within three months of the decree or order of ejectment. If the landholder does not put the decree or order in execution by actual ejectment, the right to sell will be there, but the tenant will not be wise to sell the materials. The right to claim compensation does not arise when the tenant has recovered possession of his holding.

**75.** (1) When under any provision of this Act the court has to determine the amount of compensation due on account of an improvement it shall have regard—

Amount of com-  
pensation.

(a) to the amount by which the value or the produce of the holding or the value of that produce is increased by the work ;

(b) to the condition of such work, and the probable duration of its effects ;

(c) to the labour and capital required for the making of such work, allowing for—

(i) any reduction or remission of rent or any other advantage allowed to the tenant by the landholder in consideration of the work ;

(ii) any assistance given to the tenant by the landholder in money, material or labour ; and

(iii) in the case of a reclamation or of the conversion of unirrigated to irrigated land, the length of time during which the party claiming compensation has had the benefit of the improvement.

(2) When an improvement benefits the land from which a tenant has been ejected or wrongfully dispossessed and also other land in his possession, compensation shall be determined with reference to the extent to which the first mentioned land has benefited by such work.

This section reproduces in effect section 117 of the Agra Act of 1926, substituting "work" for "improvement" in the sub-clauses and "the party claiming compensation" for "the tenant" in sub-clause (iii). Sub-section (2) is new. Section 117 of the Act of 1926, reproduced section 91 of Act II of 1901. Section 27 of the Oudh Act was similar.

1. **Tenant**, see section 3 (23) **Landholder**, see section 3(11), **Holding**, see section 3 (7) **Rent**, see section 3 (18) **Improvement**, see section 3 (8) for meaning. A rent-free grantee is not a tenant and cannot claim compensation for improvement<sup>1</sup> under this section, but he may under section 198.

2. **Compensation due on an improvement.**—A tenant is allowed compensation for such improvements as he is entitled to make under the terms of sections 65 and 66. If he can make an improvement only with the consent of the landholder or proprietor, he will not be entitled to get compensation for it if made without such consent. So a non-occupancy tenant who has constructed a well when his landholder desired and was ready to do so must go without any compensation therefor.

Compensation will be awarded only for such works as fall within the definition of improvement as given in clause (8) of section 3 of the Act. For instance, an enclosure of tenant's house is not an improvement.<sup>2</sup>

Clause (b) of section 73 refers to a suit under section 183.

3. **Estimate of compensation.**—The rules prescribed by section 75 should be kept in view in estimating the amount of the compensation payable to a tenant. The Board had arrived at nearly the same conclusion, as the rulings noted below will show.<sup>3</sup> On the credit side of the tenant are clauses (a), (b) and (c) and on the debit side the items (i), (ii) and (iii) of clause (c).

4. **Clause (a).** If the improvement has been exhausted, i. e., has ceased to increase the letting value, no compensation is due on account of it; if it has increased the letting value, compensation should be granted whether or not he has been recouped for his original outlay.<sup>4</sup>

5. **Clause (b).** It would be unfair to saddie the landlord with the full value of an improvement at the present time which in a few years may cease to operate.<sup>5</sup>

6. **Clause (c).** The test is not so much the amount of the outlay, as the increase in the letting value. The amount of the outlay is one of the factors.<sup>6</sup>

What the Court has to consider is the labour and capital required for making the improvement, and not what might have cost if the tenant had made a cheaper improvement to serve his purpose.<sup>6</sup> There, a tenant sunk a big well on his small holding. The Commissioner held that a smaller well would have served the purpose of the tenant and reduced the cost to a fourth. The Board overruled this and allowed the value of the well as it stood.

<sup>1</sup> *Gopi Saran v. Bisheshar*, 5 A. W. N. 100.

<sup>2</sup> *Raja Ramji v. Abdullah*, B. R. 4 of 1904.

<sup>3</sup> *Dilraj Singh v. Debi Dayal*, (B. R.) 12 of 1885; *Bahadur v. Afzal Ali*, B. R. 3 of 1886.

<sup>4</sup> B. R. 12 of 1885.

<sup>5</sup> See B. R. 3 of 1886.

<sup>6</sup> *Dwarka v. Bhagwati Prasad Singh*, 45 I. C. 227=5 O. L. J. 69=III U. D. 481.

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7. The reduction, remission or other advantage must be proved, *e. g.*, that the original lease was granted on a low rent on the understanding that the tenant would make an improvement, or that in view of an improvement, the landlord refrained from realising the full rent<sup>1</sup> or that he helped in making the improvement by contributing capital, labour, material, etc.

**76. (1)** If a tenant has made an improvement on land which is sold in execution of a decree for arrears of rent, or from which he is ejected, the purchaser or the landholder, as the case may be, shall become the owner of the work, but the tenant shall be entitled to the benefit of the work in respect of the land remaining in his possession to the same extent and in the same manner as it has hitherto benefited thereby.

*Works benefiting other land.*

(2) If a tenant has made an improvement on land which remains in his possession after a portion of his land has been sold in execution of a decree for arrears of rent or after he has been ejected from a portion of his land, the purchaser or the landholder, as the case may be, shall be entitled to the benefit of such work in respect of the land which does not remain in the possession of the tenant to the same extent and in the same manner as it has hitherto benefited thereby.

(3) If a landholder has executed a work which benefits the holding of a tenant and the whole or any portion of such holding is sold in execution of a decree for arrears of rent, the purchaser shall be entitled to the benefit of such work in respect of the land sold to the same extent and in the same manner as such land has hitherto benefited thereby.

This section corresponds to section 118 of the Agra Act of 1926, substituting "work" for "improvement" throughout.

Section 118 of the Act of 1926 reproduced section 92 of the Act of 1901.

Subsections (1) and (2) provide for the ownership and use of a work of improvement. See *Jawad Ali v. Chirag Ali*,<sup>2</sup> for a case under the section.

**77. (1)** If either the landholder or the tenant desires that the amount expended on an improvement executed with the permission of the assistant collector in charge of the sub-divisions under the provisions of section 72 should be determined the assistant collector in charge of the sub-division shall on application made to him for the purpose, and after due notice to the other

*Registration of outlay on improvement*

<sup>1</sup> Rent Act Ruling No. 20.

<sup>2</sup> II U. D. 261.

party, determine the amount of the outlay and enter it in a register kept in the prescribed form.

(2) The entry in the register shall be conclusive proof of the amount of the outlay in any subsequent proceedings between the parties to the application or their successors in interest respecting the cost of the work.

This section corresponds to section 25 of the Oudh Act. There was no similar provision in the Agra Act.

An application under section 77 for registration of works is in the 4th schedule group D No. 7 and must be made within six months of the completion of the improvement and the court-fee leviable is as in the Court-fees Act.

*Circular 4—It prescribes the form of certificate for improvement.*

### Registration of improvements effected by landlords.<sup>1</sup>

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1. Every landlord desiring to register an improvement should bring an application on plain paper to the officer in charge of the sub-division in which the land is situated, within one year after the completion of the work. The application should state the nature of the improvement and the *khasra* number or numbers within which it lies. On the receipt of the application the officer to whom it is presented shall give the person presenting it a written acknowledgment, and shall have it entered on a register in form 1<sup>2</sup> of unverified applications. On the first convenient opportunity an officer not lower in rank than a Deputy Collector shall proceed to the spot, and shall verify by personal inquiry both the existence of the improvement and the fact that it has been constructed at the expense of the applicant within the time alleged in the application. When the verification is completed, a certificate shall be granted to the applicant stating the nature of the improvement, and defining its position by the *khasra* number or numbers within which it lies, and a reference shall be therein made to the file which contains the original application and the record of the inquiry. Books of certificates in form 11<sup>3</sup> will be kept with serial numbers and counterfoils on which shall be made a copy of the certificate.

2. No such certificate will be given for other than permanent works such as *pakka* wells, embankments, reservoirs and drainage or irrigation channels, which involve a material outlay.

*N.B.*—These rules do not apply to permanently-settled districts or estates.

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<sup>1</sup> Sanctioned by O. R. D. Circular No. 10, dated the 6th August, 1889.

<sup>2</sup> Board's registered Form No. 24—I, Vernacular.

<sup>3</sup> Board's registered Form No. 25—I, Vernacular.



*Register of unverified applications (Form I.)*

Serial number.	Name of applicant father's, name, caste and residence.	Nature of permanent improvement.	Locality of work.		Date of completion of work.	Cost of work as stated by applicant.	Number in book of certificates.	Remarks.
			Pargana, mahal or mauza.	Khasra numbers of fields				
1	2	3	4		5	6	7	8
								NOTE.—Column 7 will be filled in after certificate has been granted. If certificate be not granted the words "certificate refused" and date of order will be entered in column 7.

*Book of certificates (counterfoil) Form II.*

Serial number	Number in register of unverified applications and file number of original application and record of inquiry.	Name of applicant, father's name, caste and residence.	Nature of permanent improvement.	Locality of work.		Date of completion of work.	Cost of work as estimated by verifying officer.
				Pargana, mahal or mauza.	Khasra numbers of fields.		

*Signature of verifying officer.*

**78.** When a court has assessed the amount of compensation due to a tenant it may, if both the landholder and the tenant desire that the compensation assessed instead of being paid wholly in money shall be made wholly or partly in some other way, proceed to give judgment according to the terms agreed between them.

This section reproduces section 28 of the Oudh Act. Section 119 of the Agra Act provided for the grant of a beneficial lease.

Section 119 of the Act of 1926 reproduced section 93 of the Act of 1901 and corresponded to section 45 of the Acts of 1873 and 1881.

**Tenant** see section 3(23), **landholder**, see section 3(11) for meaning.

A beneficial lease may be agreed to as some other way of recouping the tenant's outlay.

**79.** If a question arises between a tenant and his landholder—  
 Dispute as regards improvement, how settled.

(a) as to the right to make a work, or

(b) as to whether a particular work is an improvement,  
 or

(c) as to the amount of compensation due under sub-section (3) or of abatement of rent under sub-section (4) of section 71, or

(d) as to the right to the benefit of an improvement under section 76,

the assistant collector in charge of the sub-division shall, on the application of either party, decide the question.

1. This section reproduces section 120(1) of the Act of 1926, substituting *work* for *improvement*. Clause (d) is new

2. An application under clauses (a) or (d) for establishment of right to make or benefit from a work is No. 8 of Group D of Schedule IV. There is no limitation for it and the court-fee payable is that directed by the Court-Fees Act.

An application under clauses (b) or (c) of sub-section (1) for settlement of dispute as to an improvement is No. 9 of Group D of Schedule IV, and the limitation is one year from the date of the completion of the improvement.

Applications under this section lie to the Assistant Collector in charge of the sub-division.

### *Trees.*

**80.** (1) A tenant, other than a non occupancy tenant, may plant trees on his holding.  
 Right of tenants to plant trees.

(2) If a tenant plants, or proposes to plant, trees in such a way as to diminish the value of land not included in his holding any person, whose consent is required under the provisions of section 68, may apply to the assistant collector in charge of the sub-division for an order prohibiting the planting of trees on certain land or directing the tenant to remove trees already planted thereon and the assistant collector may, after hearing such of the parties as wish to be heard, either grant the application subject to such modification, if any, as he thinks fit or reject it.

This section is new.

The section extends the right to plant trees to all tenants who are not non-occupancy tenants. Under the Act of 1926 this was not so. Occupancy and exproprietary tenants could not plant trees except when authorised by custom or the landholder.

Sub-section (2) is very important as a check on the otherwise extensive power of tenants to plant trees. The persons who may apply for an injunction or prohibitory order are the landlord, or the mortgagee in possession, or under-proprietor or the permanent lessee or the tenant, of the land the value of which may be adversely affected by the tenant's action on his own holding.

The application is in Schedule IV, Group D, No. 10 and may be made at any time and pays court-fee as in the Court-fees Act.

81. (1) Notwithstanding anything in this Act or any custom or contract to the contrary, scattered trees situated on the holding of a tenant other than a sub-tenant or tenant of *sir* otherwise than on the boundary thereof and existing at the commencement of this Act, shall vest in such tenant, provided that such tenant has been continuously in possession of such holding from the beginning of the agricultural year 1335 *Fasli*.

Tenant's rights in trees existing at the commencement of the Act.

(2) If any question arises between a landholder and a tenant regarding the ownership of trees it shall, on the application of either party, be decided by the assistant collector in charge of the sub-division.

This section is new and relates to the rights in scattered trees on a holding. Ownership of such trees is in the tenant, provided (i) he has been continuously in possession of the holding from the beginning of the agricultural year 1335 F. (i. e. from the first of July, 1927) ; (ii) he is not a sub-tenant or a tenant of *Sir* and (iii) the trees existed at the commencement of the Act, and (iv) are not on the boundary of the holding.

*Surrender and abandonment.*

**82.** (1) A tenant not bound by a lease or other agreement for a fixed period to continue to occupy the land in the following year, may, at the end of any agricultural year surrender his holding, by sending a registered notice to his landholder intimating his intention to do so and by giving up possession thereof, whether such holding is or is not sub-let or mortgaged, but he shall not be entitled to surrender a portion only of his holding unless—

(a) the holding is situated in an alluvial mahal for the time being registered as such under the rules made under clause (k) of section 234 of the United Provinces Land Revenue Act, III of 1901, and a part of the holding has been washed away or rendered unculturable by fluvial action ; or

(b) the holding is situated in an alluvial mahal as aforesaid, or in a tract notified by the Provincial Government under the provisions of sub-section (4) of section 30 and the rent thereof has been agreed or fixed with reference to the amount of land actually cultivated in each year :

Provided that an ex-proprietary tenant shall not surrender his holding or any part thereof until the expiry of a period, which, if his rights accrued on a mortgage, shall be three years and, in other cases, six months, from such accrual.

(2) Notwithstanding such surrender, unless the tenant sends such registered notice before the first day of April he shall be liable to the landholder for the rent of the holding for the agricultural year next following the date of the surrender :

Provided that the tenant shall not be so liable in respect of any period during which the holding is let to another tenant, or is taken into his own cultivation or use by the landholder.

(3) Subject to the provisions of the proviso to sub-section (1) nothing in this section shall affect any arrangement by which a tenant and his landholder may agree to the surrender of the whole or any portion of a holding.

This section corresponds to section 103 of the Act of, 1926, with certain additions. The corresponding section in the Oudh Act was 20.

The proviso to sub-section (1) ensures that an exproprietary tenant shall not surrender his holding within six months of the accrual of the tenancy.

**83.** Notwithstanding anything in the last preceding section when a decree or order for the enhancement of the rent of any holding is passed, and the tenant thereof within thirty days of

Surrender on enhancement.

the date of such decree or order gives to the landholder a registered notice in writing of his desire to surrender such holding at the date on which such enhancement takes effect, and surrenders such holding accordingly, he shall not be liable for the rent payable for such holding in respect of any period subsequent to surrender.

This section reproduces section 104 of the Act of 1926.

**84.** Any tenant, instead of or in addition to himself sending a registered notice to the landholder under section 82 or section 83, may, before the expiry of the period prescribed for sending such notice, make an application to the tahsildar who shall thereupon cause the notice to be served on such landholder, the tenant paying the cost of service.

Notice through tahsildar.

This section reproduces section 105 of the Act of 1926, substituting "section 82 or section 83" for "section 103 or section 104."

**85.** (1) When any such notice has been received by or served on a landholder he may institute a suit to set aside notice. suit to have such notice declared invalid and the court shall thereupon determine the question between the parties.

(2) If the landholder does not institute such suit he shall be deemed to have accepted the surrender.

This section reproduces section 106 of the Act of 1926. The corresponding section in the Oudh Act was 20A.

Sections 82 to 85.

1. As shown above these sections correspond to sections 103 to 106 of the Act of 1926 which in their turn corresponded to sections 83 to 86 of the Act of 1901.

2. **History.**—Subsections (1) and (2) of section 83 of the Act of 1901 corresponded to the first and third paragraphs of section 31 of Act XII of 1881, and to section 31 of Act XVIII of 1873, and to the first two paragraphs of section 19 of Act X of 1859. Subsection (3) of section 83 was new. Cf. section 86, clauses (1), (2) and (7) of the Bengal Tenancy Act. Section 84 corresponded to the second paragraph of the proviso to section 31 of the Act of 1881; section 85 to sections 32 and 33 of the Acts of 1881 and 1873, and to the last paragraph of section 19 of the Act of 1859; and section 86 to section 33A of Act XII of 1881.

3. **Tenant**—See section 3(23) for meaning. It includes a sub-tenant<sup>1</sup>, an occupancy or an exproprietary tenant<sup>2</sup>. Although a proprietor could not at the time of transferring his proprietary rights enter into a contract to give up or waive his rights over *sir* and home land as an exproprietary tenant, there was nothing to prevent him from surrendering his tenancy at the time it arose, *e g.*, on the completion of the transfer, or sometime

<sup>1</sup> *Jagadishwar Prasad v. Inder*, XV U. D. 166=15 L. R. Rev. 115.

<sup>2</sup> *Jang Bahadur v. Rae Raja*, 7 O. C. 265.

after.<sup>1</sup> In fact, if he did not enter into possession within six months his right became time-barred. Now no surrender is permissible before the expiration<sup>2</sup> six months.

Surrender by the certificated guardian of a minor for consideration, if given effect to, binds the minor.<sup>3</sup>

A *surrender is not a transfer* and does not require the sanction of the District Judge when made by a minor's guardian.<sup>4</sup>

*Hindu father.*—Though a holding be the ancestral property of a Hindu father and his sons the former can validly surrender, and the sons will be bound.<sup>5</sup>

A wife left in charge of his holding by her husband is competent to surrender.<sup>6</sup>

*Hindu widow.*—A Hindu widow in possession of her husband's holding holds it for life only under the Act. It is doubtful whether she represents the full estate as under the Hindu Law. A surrender by her does not bind the reversioners. It has been held that a widow can not surrender any rights in a holding except to an existing tenant.<sup>7</sup> In *Jhabbar v. Suraj Prasad*,<sup>8</sup> a Single Judge of the Allahabad High Court negatived a Mahomedan widow's power to surrender so as to prejudice her husband's heirs. In *Ram Gopal v. Bhoorey Singh*,<sup>9</sup> where after a surrender by a Hindu widow, the landholder let the land to her husband's natural brother, the husband having been adopted into a different family, so that the lessee was a nephew of the deceased husband, it was held that that brother could not resist the suit for ejectment on the ground that the surrender did not affect his interest as heir to the deceased male. In *Govind v. Dipa*,<sup>10</sup> a Hindu widow's surrender was held to have extinguished the interest of heirs under clause (e) of section 22 of the Act of 1901. So in *Hanuman Prasad v. Ram Khelawan*,<sup>11</sup> *Ram Bharosa v. Muhammad Ali Khan*.<sup>12</sup>

<sup>1</sup> *Gaya Singh v. Udit*, 13 All. 396. See *Lekhraj v. Parshadi*, 6 A. L. J. 713; *Kamla Charan v. Sheo Shankar*, 36 I. C. 1007.

<sup>2</sup> *Gaya Singh v. Udit*, 13 All. 396; *Lekh Raj v. Parshadi*, 6 A. L. J. 713.

<sup>3</sup> *Shambhu Nath v. Lalji Sahai*, 1922 R. C. 526=V U. D. 391; *Ganga Prasad v. Sapan Ram*, XVI U. D. 2=1935 R. D. 198.

<sup>4</sup> *Balwant Singh v. Hardeen Singh*, 8 L. R. Rev. 158=101 I. C. 806=VIII U. D. (H. C.) 155; *Amar Nath Singh v. Har Prasad Singh*, XIII U. D. (H. C.) 10.

<sup>5</sup> *Sarabjit Singh v. Mohan Singh*, 11 O. C. 292.

<sup>6</sup> *Gajadhar Miera v. Babu Ram*, 12 L. R. Rev. 85=XII U. D. 102.

<sup>7</sup> *Baldeo v. Murlidhar*, XX U. D. 32=1938 R. D. 721.

<sup>8</sup> 9 I. C. 894.

<sup>9</sup> III U. D. 600=I U. P. L. R. (B. R.) 41=54 I. C. 567=5 R. and Cr. L. J. 253=4 R. D. 396=54 I. C. 567.

<sup>10</sup> B. R. 12 of 1919=III U. D. 703=3 L. R. Rev. 291=1 U. P. L. R. (B. R.) 47=54 I. C. 572=5 R. and Cr. L. J. 236

<sup>11</sup> V U. D. 199=1922 R. C. 281=3 L. R. Rev. 489=7 R. D. 486.

<sup>12</sup> 5 L. R. Rev. 127=1924 R. C. 1924=VI U. D. 101=9 R. D. 519.

A Hindu occupany tenant made a gift of his holding to his daughter and daughter's son, and died leaving a widow and a separated brother. The widow consented to entries being made according to the gift, but the brother disputed the title of the daughter's son. The matter was compromised, as the result of which the daughter and daughter's son got the major portion of the holding, the remainder going to a woman of the family and after her to the brother. After the widow's death, the brother repudiated the compromise and laid claim to the entire holding. A single judge held that even if the gift was invalid, the widow's action amounted to relinquishment of her holding, on which the daughter's son became tenant in his own right, and that the brother and his heirs could not repudiate the compromise.<sup>1</sup>

*Heir*—Where a person who might be entitled by succession to a share in a holding never made a claim he must be deemed to have abandoned it.<sup>2</sup>

4. **Not bound by a lease or agreement**—A tenant for a fixed term cannot surrender during the currency of his term unless the landholder chooses to acquiesce. At the end of the fixed period, the tenant may give up the land according to his contract without any notice,<sup>3</sup> or continue to cultivate under a fresh arrangement. An agreement not to surrender at any time is of no avail in preventing relinquishment,<sup>4</sup> as it is not an agreement for a fixed period.

5. **End of any agricultural year i.e., 30th of June of any year.**  
**Holding**—See section 3 (7).

6. **Whether such holding is or is not sublet or mortgaged**—These words remove a serious doubt which arose from the trend of the decisions that a surrender to be effective must be accompanied with delivery of possession, and give effect to *Mangal v. Mawast*,<sup>5</sup> in which it was held that where a mortgagee was in possession of a holding, possession need not be delivered to the zamindar to make the surrender valid. The fact that a person is in possession under a mortgage or sublease validly made will not *per se* derogate from the legal effect of a surrender properly made. The effect of a surrender on the sub-lessee or mortgagee is prescribed by section 47; and such sublessee or mortgagee is not open to action under section 180 as shown in the notes to that section.

7. **Surrender of part of holding**—A tenant cannot compel his landholder to accept surrender of a part only of the holding. He must

<sup>1</sup> *Beni Madho v. Shamthu Nuth*, IX U. D. (H. C.) 142.

<sup>2</sup> *Bhagwan Prasad v. Bagar*, VI U. D. 198=10 Rev. and Cr. L. J. 281=5 L. R. Rev. 238=1924 R. C. 330=8 R. D. 189.

<sup>3</sup> *Tilak v. Mahabir*, 7 B. L. R. Ap. 11=15 W. R. 454; *Deojit v. Deoki Nandan*, XI U. D. 163=14 R. D. 551; *Deokinandan v. Dejit*, XI U. D. 172=14 R. D. 552.

<sup>4</sup> *Gopal Pal v. Tarnee Parshad*, 9 W. R. 89.

<sup>5</sup> VI U. D. 461=6 L. R. Rev. 224=12 R. and Cr. L. J. 5=1925 R. C. 481.

give up or keep it as a whole. The zamindar may, however, agree to the surrender of any part. If A cultivated certain plots as a tenant and other plots as his *sir*, the fact that he subsequently executed a *kahuliat* for all the plots does not make the two kinds of plots one holding.<sup>1</sup> See note 10 *infra* at p. 366 as to joint tenancies. The exceptions to the rule against partial surrenders are mentioned in clauses (a) and (b) of subsection (1) and in subsection (3).

Surrender of a part of a holding in favour of any one of a body of landholders without the consent of the others is not permissible,<sup>2</sup> but if for a sum of money received a tenant gives certain fields to the payer of the money, the transaction should not be deemed a relinquishment, and the landholder should be shown as in possession in lieu of the amount advanced, and the name of the occupancy tenant retained as tenant-in-chief.<sup>3</sup>

A valid agreement to surrender a part of a holding to one of several proprietors must be proved and in absence of such agreement to surrender made before the first of April, the tenant remains liable to pay rent for the year.<sup>4</sup>

A part of a holding may be surrendered in the two cases mentioned in clauses (a) and (b) to section 82 (1). Under clause (a) the holding must be situate in an alluvial mahal which is for the time being registered as such under the rules made under clause (k) of section 234, United Provinces Land Revenue Act and a part of the holding must have been washed away or rendered unculturable by fluvial action.

Under clause (b) the holding must be situate in an alluvial mahal mentioned in clause (a), or in a tract notified under section 30 (4) as a tract of shifting or unstable cultivation, and the rent has been agreed or fixed with reference to the amount of land actually cultivated in each year.

The case of exproprietary tenants is expressly mentioned in the proviso to subsection (1). They cannot surrender in whole or in part for a period of three years or six months as the case may be. Exproprietary rights accrue on a mortgage from the date of transfer of possession to the mortgagee and in other cases on the date of transfer.

**8 Notice**—The procedure prescribed by the enactment should be followed to make a surrender effective.<sup>5</sup>

A compromise in a suit for recovery of possession of certain plots based on plaintiff's title which was denied by the defendants recognizing

<sup>1</sup> *Mahabir Singh v. Sheorani*, II U. D. 215—3 R. D. 116.

<sup>2</sup> *Dongar Singh v. Biljit Singh*, XVII U. D. 41—1956 R. D. 57.

<sup>3</sup> *Muhammad Khan v. Ruhim Buz Khan*, 15 L. R. Rev. 611—XV U. D. 349.

<sup>4</sup> *Kamta Prasad Misir v. Mangil*, 12 L. R. Rev. 91—15 R. D. 279.

<sup>5</sup> *Amar Nath Singh v. Har Prasad Singh*, XIII U. D. (H. C.) 10—13 L. R. Rev. 20 ; *Nand Ram v. Chhedi Lal*, IX U. D. (H. C.) 66—9 L. R. Rev. 113—1927 R. C. 563.



the right of the plaintiff to them is not a relinquishment by the defendants at all.<sup>1</sup>

Notice or consent is not necessary to validate a surrender but is necessary to enable the tenant to escape liability for payment of rent.<sup>2</sup> Its absence renders a tenant liable for one year's rent.<sup>3</sup> If a tenant or his heir<sup>4</sup> wishes to avoid liability for payment of rent of the next year, he should give written notice of his intention, explicitly worded, to surrender to the landholder before the first of April. A written notice is also necessary when a tenant is not willing to abide by an order of enhancement of rent and therefore wishes to relinquish his holding. Such notice must be given within thirty days of the date of the decree or order of enhancement, and must be to the effect that the tenant intends to surrender at the commencement of the period in which such enhancement takes effect. If the landholder refuses to receive a notice of surrender, the tenant may apply to the Tahsildar to serve it and that officer shall cause service thereof at the expense of the applicant.

A tenant gave notice of intention to surrender before the first of April to *B* and his brother. On objection that *B* and the brother had divided the holding, *A* gave a fresh notice to *B* alone after the first of April. The requirements of the law are complied with and there is a valid surrender.<sup>5</sup>

9. **Form of notice.**—A notice should show what it is about, though it need not be worded very precisely.<sup>6</sup> A notice, otherwise sufficient, is not invalidated because it refers also to other lands, not in the tenant's occupation, or in respect of which he cannot give a notice of surrender. It will be considered good so far as it is applicable to the portion of the land which the tenant is entitled to surrender.<sup>7</sup> A mere clerical error will not invalidate a notice.<sup>8</sup> One notice is sufficient for several holdings in the occupation of a tenant.<sup>9</sup> A defective notice is no notice at all.<sup>10</sup>

No. 9, Group C, Sch. IV provides for applications to Tahsildars for service of notice. No court-fee is payable.

Rules of procedure relating to surrender and abandonment of land under section 105 of Act III of 1926 (present section 84) are given below.

<sup>1</sup> *Nand Ram v. Chhedi Lal*, IX U. D. (H. C.) 66.

<sup>2</sup> *Jagadishwar Prasad v. Inder*, 15 L. R. Rev. 115=XV U. D. 166.

<sup>3</sup> *Kharbar v. Abdul Raoof*, 1925 A. I. R. All. 815=11 Rev. and Cr. L. J. 151=6 L. R. Rev. 117=VI U. D. (H. C.) 443=1925 R. C. 130=86 I. C. 872=9 R. D. 470.

<sup>4</sup> *Peary Mohan v. Kunwar Chander*, 19 Cal. 790.

<sup>5</sup> *Ram Lal v. Labhu Ram*, XVI U. D. 244=1935 R. D. 237.

<sup>6</sup> *Radha Bullab v. Beharee Lal*, 12 W. R. 537; *McGiveran v. Hurkhoo*, 18 W. R. 203.

<sup>7</sup> *Newaj v. Kali Prosunno*, 6 Cal. 543; *Guldo v. Hoolasi*, 2 Agra 247.

<sup>8</sup> *Ryese-un-nisa v. Bydonath*, 17 W. R. 354.

<sup>9</sup> *McGiveran v. Duriaw*, 20 W. R. 479.

<sup>10</sup> *Rajkissen v. Parrankissen*, W. R. (1864), Act X, 29.

**BOARD OF REVENUE, UNITED PROVINCES.**

JUDICIAL DEPARTMENT.

G. O. No. 3771—I. A., 258—1927.

*Dated 12th October, 1927.***Revenue Court Manual Rules 127 to 137.**

*Rules of procedure relating to surrender and abandonment of land  
under section 105 of the Agra Tenancy Act, III of 1926.*

127. Every application made to a Tahsildar under section 105 shall contain full particulars as to the name, caste and residence of the landholder.

128. With the application the applicant shall present, in duplicate, a notice written in Persian and Nagri characters for service on the landholder. The following form of notice is suggested as convenient :—

I, *A. B.*, son of *C. D.*, caste....., resident of..... a tenant in mahal *X*, thok or patti *Y*, hereby inform you, *C. D.*, son of *E. F.*, caste....., resident of....., the person from whom I hold, that I intend to surrender my holding in the same, comprising the following lands :—

Number of field.	Area of field.	Rate of holding.
	Total area	

(Signed).....*A. B.*, .....  
*Tenant.*

129. Each copy of the notice shall be signed by the tenant and as many copies in duplicate shall be filed as there are landholders on whom notice is to be served.

130. The cost of service shall be paid when the application is made, otherwise the Tahsildar shall refuse to serve the notice and shall record his refusal on the back of the application.

131. The Tahsildar shall cause the tenant to attest the notice; and, if the tenant is not personally known to him, shall require him to produce two witnesses to his identity, and shall record the fact of the identification.

132. If the notice is served by the Tahsildar under section 105 of the Act it shall be endorsed as follows :—

This notice of *A. B.*, a tenant in mahal *X*, thok or patti *Y*, is served upon you *C. D.*, under section 105, of Act III of 1926,

10. **Notice in case of joint holding**—One co-tenant cannot bind the others by a notice given by him alone.<sup>1</sup> as he alone cannot surrender the whole or only his share of the holding and the surrendered share will go to the other co-tenants.<sup>2</sup> The landholder may however accept surrender by some co-tenant where the non-surrendering co-tenant is *farar*.<sup>3</sup>

A surrender by one co-tenant, where permissible, does not enlarge the rights of the others or deprive the landholder of what would ordinarily belong to him.<sup>4</sup>

11. Under section 84 an application may be made to the Tahsildar to serve notice on the landholder. The Tahsildar and not the S. D. O. is to be applied to. Even if it is put before the S. D. O. and verified before him, the proceeding is not complete until the necessary formalities such as payment of process fee and attestation by the applicant are gone through before the Tahsildar.<sup>5</sup>

A Tahsildar's order under section 84 is appealable under section 270.<sup>6</sup>

12. **Effect of notice.**—The effect of a proper notice is to absolve the tenant from liability to pay rent from the date of the surrender under section 82 and from the date of the operation of the enhancement order under section 83. The claim of a person to succeed to the holding of a deceased was accepted by the trial court, but on appeal, rejected by the Commissioner, and he appealed to the Board and at the same time sent a letter to the landholder asking him to take possession of the land, but the landholder told him to continue in possession until the decision of the Board appeal, which was subsequently decided against him. He was held liable to pay compensation for the year preceding but not for the year succeeding the offer made by him to vacate the land.<sup>7</sup> The landholder may bring a suit contesting the notice if he is so advised. The notice must however be followed by relinquishment, that is, lesser of cultivation without which there is neither a break in the tenancy.<sup>8</sup>

<sup>1</sup> *Masku Lal v. Lekha Singh*, III U. D. 152; *Ishri Prasad v. Ganga Prasad*, B. R. 7 of 1884; *Jhannbar v. Suraj Prasad*, 9 Ind. Ca. 894; *Ram Partab Bahadur Singh v. Rampat*, II U. D. 271=3 R. D. 184; *Prm Nurnin v. Ganga*, 1923 R. C. 268=9 Rev. a d Cr. L. J. 284=V U. D. 531=4 L. R. Rev. 269=7 R. D. 220.

<sup>2</sup> *Jhagroo v. Ram Muneshwar Rai*, XX U. D. 251, referring to *Bindayachal v. Sohdeo Rai*, XV U. D. 322; *Kulwant Rai v. Busheshwar Nath*, XIII U. D. 198=14 L. R. Rev. 398.

<sup>3</sup> *Sukh Nandan v. Bindeshwar Baksh*, XVII U. D. 115.

<sup>4</sup> *Peary Mohan v. Radhika Mohan*, 8 C. W. N. 315; *Raghu Nath v. Jutten*, 2 U. P. L. R. (Pat.) 97.

<sup>5</sup> *Jannhars Prasad v. Jwala Prasad*, XX U. D. 215=1939 R. D. 225.

<sup>6</sup> *Janhari Prasad v. Jwala Prasad*, XX U. D. 215.

<sup>7</sup> *Lal Jagdish Bahadur Singh v. Ajudhia Prasad*, XV U. D. 142.

<sup>8</sup> *Ishri Singh v. Ganga Prasad*, B. R. 7 of 1884.

nor cesser of the liability to pay rent, nor end of the tenancy,<sup>1</sup> nor surrender.<sup>2</sup>

See note 16 *infra*.

Where a tenant for a term who has no right to have notice of a proposed surrender issued, applies under section 84 to have such notice issued on the plea that he has a right to the issue of such notice, the landholder should contest the notice. If he does not, the presumption in sub-section (2) of section 85 applies, and he must be deemed to have accepted the surrender, and will not be allowed to challenge that proposition in a subsequent proceeding by showing that the tenant had no right to the issue of the notice.<sup>3</sup>

See *Sahadeo Ram v. Dukhwanti*,<sup>4</sup> as to remedy of a person who having surrendered wishes to resile.

13. **Suit by landholder.**—A landholder's right of suit arises only when the notice has been served under section 82 or section 84. If on receipt of the letter he does not bring a suit to have it declared invalid, he is deemed to have accepted the surrender, but not the position that the person giving notice was his tenant.<sup>5</sup> But if a notice has not been sent or properly served under sections 82 or 84, his omission to bring a suit will not complete the surrender. A landholder cannot sue for a declaration that a tenant is not entitled to surrender his holding or a part of it.<sup>6</sup>

Where a suit to contest a notice of surrender is decreed because the tenant had not given a previous notice to the zamindar, but the tenant gives up possession in pursuance of the surrender, which both parties by their conduct accept, the tenant, if he re-enters on the land, does so as a trespasser.<sup>7</sup>

The suit falls in Group B (No. 7) of the Fourth Schedule and is cognizable by an Assistant Collector of the first class, and an appeal from his order lies to the Commissioner. The limitation is 15 days from the date of the receipt or service of the notice. The court-fee is eight annas. The suit contemplated is one to contest a notice of surrender, and not one to enforce a covenant for surrender, which lies in a Civil Court.<sup>8</sup>

In Oudh, the suit was No. 1A of section 108 and was triable by an Assistant Collector of the first class or the Collector. When tried by the

<sup>1</sup> *Bent Singh v. Shukh Gulam Ali*, B. R. 8 of 1885.

<sup>2</sup> *Gurwar Singh v. Pohn Singh*, B. R. 15 of 1935=XVII U. D. 56=1936 R. D. 98; *Mundul v. Sajad Ali*, 1930 A. 1 R. (Oudh) 69=XI U. D. (H. C.) 67=6 O. W. N. 1094=11 L. R. Rev. 24=13 R. D. 865; *Damunissa v. Fagun Hasan*, 9 O. L. J. 319.

<sup>3</sup> *Qutbuddin v. Khazan Singh*, XV U. D. 148=15 L. R. Rev. 229.

<sup>4</sup> XX U. D. 285.

<sup>5</sup> *Hur Swarup v. Tanna Singh*, XVI U. D. 32.

<sup>6</sup> *Mahabir Singh v. Sheo Ram*, II U. D. 215=3 R. D. 116.

<sup>7</sup> *Rameswak v. Una Kishore*, VII U. D. 41=9 L. R. Rev. 198=11 R. D. 319.

<sup>8</sup> *Laljit v. Umrao*, 5 All. 103=2 A. W. N. 196=3 Leg. Rem. 185.

former an appeal lay to the Collector, and when tried by the Collector an appeal lay to the Commissioner on a point of law only and there was no further right of appeal. The limitation for the suit was 30 days from the receipt or service of the notice of relinquishment.

14. **Effect of surrender on third parties.**—Surrender enures for the benefit of all the co-sharers of the zamindari.<sup>1</sup>

The widow of a Hindu occupancy tenant mortgaged the holding, but her name continued to be recorded as tenant in possession and she was not shown as *mafrur*. She afterwards surrendered the holding. The mortgagee in actual possession may be ejected by the landholder as trespasser.<sup>2</sup>

15. **Writing.**—A relinquishment need not be in writing,<sup>3</sup> when the tenant does not hold under a lease<sup>4</sup> or holds under a registered lease,<sup>5</sup> but if it is not in writing, the tenant may still be liable for the rent of the holding unless he has come to a different arrangement with the landholder.<sup>6</sup> A writing showing a surrender of an occupancy holding is open to suspicion and must be proved to have been for consideration.<sup>7</sup> Freedom from liability to pay rent without any other consideration is sufficient.<sup>8</sup> No notice is necessary when relinquishment has been accepted.<sup>9</sup>

Surrender, when accepted, cuts off the connection of the tenant with the holding.

16. **Agreement to relinquish is invalid.** An occupancy tenant, though he gives a *kabuliat*, cannot legally bind himself to give up the holding at the end of the term fixed in the instrument.<sup>10</sup>

<sup>1</sup> *Basdeo v. Mohan*, 1924 A. I. R. All. 865=10 Rev. and Cr. L. J. 149=1924 R. C. 92=VI U. D. (H. C.) 66=5 L. R. Rev. 113=84 I. C. 1000=9 R. D. 316; *Mithan Lal v. Jhanda*, XI U. D. 190=14 R. D. 643.

<sup>2</sup> *Ram Shankar Singh v. Raghubar*, 1938 A. L. J. (B. R.) 112.

<sup>3</sup> *Abdur Rahman v. Ali Hafiz*, 5 C. W. N. 551; *Kalyan Singh v. Ram Singh*, 7 Ind. Ca. 637; *Braro Nath v. Moheshwar*, 28 C. L. J. 220=46 I. C. 100; *Bhagwati Prasad v. Samjhawan*, XIII U. D. 26=13 L. R. Rev. 1; *Sukhdeo v. Bijai Singh*, V U. D. 117=1922 R. C. 47.

<sup>4</sup> *Waris Khan v. Daulat*, 25 All. 77=22 A. W. N. 201; *Enayat-ul-lah v. Jai Lal*, 18 A. W. N. 31; *Kailashpat v. Bhagirath*, II U. D. 681. *Contra Rai Singh v. Vansittart*, 9 A. W. N. 3.

<sup>5</sup> *Poran Motia v. Indra Sen*, 47 C. 129.

<sup>6</sup> *Waris v. Daulat* (*supra*).

<sup>7</sup> *Gulab v. Sirdar*, I C. R. 105.

<sup>8</sup> *Mangal v. Mawasi Ram*, VI U. D. 461.

<sup>9</sup> *Kailashpat v. Bhagirath*, II U. D. 681.

<sup>10</sup> *Nanda v. Mahadeo Singh*, XX U. D. 160=1939 R. D. 83; *Kauri Thakurani v. Ganga Naram*, 10 All. 615=8 A. W. N. 239; *Beni v. Ghulam Ali*, B. R. 8 of 1885; *Laljit v. Umrao*, 5 All. 103=2 A. W. N. 196.

An occupancy tenant who enters into what is in effect an agreement to relinquish but does not give up possession remains an occupancy tenant.<sup>1</sup>

A surrender without relinquishment of possession is of no effect and does not entitle the landholder to recover possession by a suit for ejectment.<sup>2</sup>

Three brothers, *A*, *B* and *C*, partitioned their occupancy holding privately, each taking possession of one-third. Then they bought the proprietary rights in the mahal *A* mortgaged his proprietary share and relinquished his occupancy rights in favour of the mortgagee. *B* died leaving *H P*, a widow of his predeceased son. On his holding, the names of *A* and of the two sons, *D* and *E*, of *C* were recorded, *D* sold in 1929 his proprietary rights to *H. P.* *A* and *D* (*E* having died) surrendered their occupancy interests to *H. P.*, for a sum of Rs. 200 paid by the latter. In a suit by *D* to have his tenancy rights declared, it was held that *H. P.* being a woman and a member of the same family as *D*, it would be very difficult for her to prove that *D* really gave up possession, but the registered deed of surrender and payment of the consideration were sufficient evidence of effective relinquishment.<sup>3</sup>

In the case of occupancy tenants, the proceedings for surrender have to be proved by clear and unmistakable evidence to have been genuine proceedings. A surrender by a non-occupancy tenant stands on a different footing as he is liable to ejectment at will. *A*, a non-occupancy tenant, surrendered his holding, the landlord then leased it for 7 years to *B*, the lease being attested by *A*. *B* however sublet the holding to *A* and thus asked him to remain on as a sub-tenant. This is sufficient to show that the surrender by *A* was effective; and he cannot get a declaration that he is still the tenant-in-chief.<sup>4</sup>

An agreement to surrender in a notice under section 82 must be followed by actual evacuation.<sup>5</sup>

Where a tenant files an application for surrender of his entire holding but his application is dismissed for failure to deposit the process fee, there is no valid surrender and he continues as tenant. The landholder cannot treat a part of it which has been sublet as surrendered, and if he does so and ejects the sub-tenant as a trespasser under section 180, this amounts to wrongful dispossession of the tenant who can sue under section 183.<sup>6</sup>

Where an application for surrender is put in and the applicant goes through the elaborate procedure laid down for surrender in the

<sup>1</sup> *Shankar Khandatpuri v. Sheo Singh*, III U. D. 609=3 Rev. and Cr. L. J. 173=40 I. C. 48=4 R. D. 399; *Bishun v. Ram Bahadur Singh*, 15 L. R. Rev. 162=XV U. D. 88.

<sup>2</sup> *Amar Nath Singh v. Har Prasad Singh*, XIII U. D. (H. C.) 10.

<sup>3</sup> *Narain v. Har Piar*, XI U. D. 170=12 L. R. Rev. 266=15 R. D. 524.

<sup>4</sup> *Ram Lal v. Sam-un-nissa*, XII U. D. 172=12 L. R. Rev. 262=15 R. D. 522.

<sup>5</sup> *Ram Raj v. Ram Kishun*, B. R. 9 of 1913; *Shiva Tahal v. Jawahir Lal*, 31 I. C. 795; *Raghubir v. Dwarika*, XI U. D. 226 (otherwise the tenant remains a tenant and does not become a trespasser); *Sukhnandan v. Bindeshri Bux Singh*, XVII U. D. 115.

<sup>6</sup> *Sarup v. Parbhu Shankar*, XIX U. D. 15=1938 R. D. 18.

Revenue Court Manual therefor and it is accepted and possession decreed to the zamindar, the onus lies on the tenant wishing to repudiate it to show that he was tricked and did not wish to surrender.<sup>1</sup>

Relinquishment is not complete without actual abandonment of the holding, unless the landholder is in actual possession at the date of the agreement or deed of surrender.<sup>2</sup> Execution of an *istifa* and payment of money are sufficient evidence of actual surrender, although evidence as to delivery of possession is wanting or that the surrender was at the end of an agricultural year.<sup>3</sup>

A judgment-debtor entered into an agreement with the decree-holder to relinquish a part of the *sir* lands in his favour, while the decree-holder agreed to give up a part of the decretal amount. *Held*, that the agreement did not amount to a surrender of the tenancy.<sup>4</sup>

17. Taking a new lease is surrender of the old holding;<sup>5</sup> so taking a lease of a part giving up the rest.<sup>6</sup>

**86.** Subject to the provisions of section 36 a landholder may enter upon and take possession of a holding or a part of a holding surrendered in accordance with the provisions of the Act.

Taking possession of holding surrendered.

This section is new.

*Subject to the provisions of section 36.*

This means that in the case of a female tenant holding an interest inherited as a widow, as a mother, as a step-mother, as a father's mother or as a daughter or in the case of a tenant inheriting as a father's father a surrender of the holding will not entitle the landholder to enter upon it.

In such cases the tenant has only a limited interest and on surrender the holding will devolve on the nearest surviving heir of the last male tenant.

**87.** (1) Subject to the provisions of sub-sections (2) and (3), a tenant who ceases to cultivate and leaves the neighbourhood shall not lose his interest in his holding if he leaves in charge thereof a person responsible for payment of the rent as it falls due and gives written notice to the landholder of such arrangement.

Abandonment.

(2) If the person so left in charge is a person—

(a) on whom, in the event of the tenant's death, the tenant's interest would devolve, or

(b) who is to manage the holding for the benefit of the person on whom in the event of the tenant's death the

<sup>1</sup> *Mahadeo v. Muhammad Riawanullah*, XX U. D. 337=1939 R. D. 375.

<sup>2</sup> *Peary Lal v. Bans Bahadur Singh*, 1 L. R. Rev. 761=V U. D. 28=6 R. and Cr. L. J. 123=2 U. P. L. R. (B. R.) 144=6 R. D. 109; *Bhagwant v. Mare*, 1923 A I. R. All. 113=V U. D. (H. C.) 166=1922 R. C. 635=72 I. C. 1024=7 R. D. 83.

<sup>3</sup> *Narain v. Har Piari*, XII U. D. 170=12 L. R. Rev. 266=15 R. D. 524.

<sup>4</sup> *Raghubans v. Brijnandan*, 6 A. L. J. 477=1 I. C. 731.

<sup>5</sup> *Brojo Nath v. Moheshwar*, 28 C. L. J. 220=46 I. C. 100.

<sup>6</sup> *Tamis v. Bindewari*, 22 C. W. N. 967=46 I. C. 862.

tenant's interest would devolve, the tenant shall, on the expiry of a period of five years, lose his interest in his holding unless he, within such period, resumes cultivation thereof, and such interest shall devolve on the person on whom the tenant's interest would devolve in the event of his death.

(3) If the person so left in charge is not a person mentioned in sub-section (2), the tenant shall on the expiry of the period for which he could have sublet, be *presumed* to have abandoned his holding unless within such period he resumes cultivation thereof.

(4) A tenant who ceases to cultivate and leaves the neighbourhood otherwise than in accordance with the provisions of sub-section (1), shall be presumed to have abandoned his holding.

1. The section corresponds to section 107 of the Agra Act of 1926, and to section 21 of the Oudh Act.

In sub-section (3) the word *presumed* has been substituted for *deemed* by the U. P. Tenancy (Amendment) Act, No. I of 1940.

Sub-section (1) has now been differently drafted. It provides that if a tenant ceases to cultivate and leaves the neighbourhood leaving in charge of his holding a person responsible for payment of the rent as it falls due and gives written notice to the landholder of such arrangement, he will not be regarded as having abandoned his holding. But this is subject to the provisions of sub-sections (2) and (3), that is to say, if sub-section (2) applies the tenant must resume cultivation within five years; if sub-section (3) applies he must resume cultivation within the period for which he could have sublet. Otherwise he will lose his interest in the holding.

Subsection (2) is mostly subsection (2) of the Act of 1926, omitting the three clauses (a), (b) and (c). Subsection (3) is new.

It was held that the widow left in charge prevented abandonment, although some person, found to have cultivated on her behalf, cultivated it.<sup>1</sup>

An agent, though he may not be a hired servant, left in charge, who has undertaken to pay the rent as it falls due, will prevent abandonment, *seous* under the Act of 1926.

It was held that where a tenant after mortgaging his holding left the village but was not shown as *Mafrur* and the mortgagee was recorded in possession as such, there was no presumption of abandonment, and hence on the tenant formally surrendering the holding to the zamindar the latter could eject the mortgagee.<sup>2</sup>

2. Now the conditions of abandonment under subsection (1), will be (i) ceasing to cultivate, (ii) leaving the neighbourhood, (iii) not leaving in charge a person responsible for the payment of rent as it falls due and

<sup>1</sup> *Baldeo Singh v. Balkishen Das*, III U. D. 132—4 R. and C. L. J. 261—5 R. D. 534.

<sup>2</sup> *Ram Shankar Singh v. Raghubir*, XIX U. D. 204—1938 R. D. 619.



(iv) not giving written notice to the landholder of the arrangement as to the regular payment of rent.

A tenant in servico who, while away for a long time, ceased cultivation and left no one in charge was held to have abandoned.<sup>1</sup>

There will be no presumption of abandonment if a tenant has not left the neighbourhood although he has given up all connection with the land,<sup>2</sup> or has ceased cultivation.<sup>3</sup>

Abandonment presupposes previous occupation. A person entitled to an interest in a holding or a co-tenant who has never been in occupation cannot be said to have abandoned it. He may lose his interest by adverse possession.<sup>4</sup>

Where land granted to *B* is really cultivated by *B*, *C*, *D* who live together and on a formal surrender by *B* the names of *C* and *D* are entered, there is no change in the tenancy by surrender or abandonment.<sup>5</sup>

A plea of abandonment is open to a land-holder but not to a co-tenant of a tenant who is said to have abandoned.<sup>6</sup>

Where a tenant, *A*, has left the neighbourhood and has ceased cultivation and *B* cultivates and pays the rent, the decision of the question of abandonment depends on two facts, viz., (1) whether *A* has given up cultivation and left the neighbourhood or has died without heirs or leaving heirs, and (2) the character in which *B* cultivates and pays the rent.

3 Sub-section (2) requires the following conditions to be fulfilled:—(i) leaving cultivation and leaving of neighbourhood by a tenant, (ii) for five years, (iii) leaving a prospective heir in charge, in or on trust for him. Fulfilment of these conditions is abandonment and terminates the tenant's interest, as if by death, for the zamindar does not take the holding, which must pass to the person left in charge i.e., to the person entitled to succeed him in case of his instant death.

Section 87 (2) does not apply unless the whole holding has been left in charge of the person entitled to succeed on the tenant's death. A tenant and his sons arranged that the sons would take over charge of the holding which they did. They then divided the holding among themselves, *A*, one of the sons getting a share. The father wished to end the arrangement about 13 years later so far as *A* was concerned. In the interval, the sons paid the rent to the father who continued to be recorded as tenant. *A* not being willing the father sued *A* under section 44 of the Act of 1926 as a trespasser. *A* pleaded that he had acquired the tenancy (occupancy) right of his father on the lapse of 5 years from the date of the arrangement. It was held that sub-section (2) did not apply as *A* had got only a part and not the whole of the

<sup>1</sup> *Nar Singh Rai v. Raja Ram Lal*, XVIII U. D. 228=1937 R. D. 291.

<sup>2</sup> See *Shoo Nath v. Autar*, V U. D. 371=4 L. R. Rev. 130=9 R. and Cr. R. L. J. 155=1923 R. C. 34=6 R. D. 26.

<sup>3</sup> *Maharaji Naik v. Shoo Mangal Das*, III U. D. 153=4 R. D. 7.

<sup>4</sup> *Mohan Pandey v. Chhatradhari*, XIV U. D. 515=14 L. R. Rev. 916; *Ganga v. Shoo Nath*, 1938 A. L. J. (B. R.) 50; *Dasrath v. Humuman Prasad Narain Singh*, VII U. D. 63=8 L. R. Rev. 189.

<sup>5</sup> *Bandi Din v. Bishun Narain*, IV U. D. 612=2 L. R. Rev. 137.

<sup>6</sup> *Mohan Pandey v. Chhatradhari*, XIV U. D. 515.

holding, and his continuance in possession against his father's wishes brought him within the purview of section 44 of the Act of 1926.<sup>1</sup>

Where the tenants of a fixed-rate holding left the village and apparently forgot all about the land and their interests in it, leaving it to their landlords to collect the rent payable by the occupiers of the land and to settle tenants on any land which became vacant, the conduct of the tenants though inexplicable was held not to lead to inference of abandonment.<sup>2</sup>

Where a widow left her husband's home for good and without any intention of ever returning to it, the presumption in sub-section (2) was held to apply and she was deemed to have lost interest in the holding after five years, and the reversioner left in charge was held to have acquired the holding.<sup>3</sup>

Where the allegation of the landholder is that the tenant has died without heirs, he must prove it.<sup>4</sup> The mere fact that no trace of the heirs can be found is immaterial, if the land is cultivated by subtenants holding under written leases, who pay rent for him.<sup>5</sup> A tenant will not be presumed to be dead, when the landholder has obtained decrees for enhancement and arrears of rent within recent years, although in those suits the person in occupation appeared for the tenant.<sup>6</sup> But if he has been unheard of for ten years, a presumption of death arises, and the sub-tenant cannot be said to be acting on his behalf.<sup>7</sup>

There is no presumption as to the date of death.<sup>8</sup>

Where a widow tenant has not been heard of for 7 years, and the landlord sues to eject the person in possession, a collateral, it should be held that after the lapse of 5 years of the disappearance her rights came to an end, and the collateral would be liable to ejectment unless he proves co-sharing.<sup>9</sup>

Where a tenant ceased to cultivate his holding and left a collateral in charge of the holding the latter in order to succeed to the holding had to prove that he shared in the cultivation at the time of the real tenant's death.<sup>10</sup>

Where the mortgagee of a tenant cultivates, and the tenant has not been heard of for 7 years, there is a presumption of death and termination

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<sup>1</sup> *Govind Das v. Ajodhia Prasad*, XIX U. D. 44—1938 R. D. 58.

<sup>2</sup> *Narsingh Rai v. Radha Govind Singh*, XIV U. D. 68.

<sup>3</sup> *Girdhari Singh v. Ram Puri*, XV U. D. 476.

<sup>4</sup> *Raja Singh v. Pargam Singh*, I U. D. 362—32 I. C. 586.

<sup>5</sup> *Raja Singh v. Pargam Singh*, I U. D. 362.

<sup>6</sup> *Jai Karan v. Ram Charitar Lal*, I U. D. 129—35 I. C. 488—III U. D. 693.

<sup>7</sup> See *Randhir Singh v. Har Sahai Ram*, I U. D. 15.

<sup>8</sup> *Manohar v. Chunni*, 1922 R. C. 294—3 L. R. Rev. 393—5 R. D. 104.

<sup>9</sup> *Nar Singh v. Kariya*, IV U. D. 311—6 R. D. 509 ; *Gauri Shunkar v. Nageshar*, 1925 R. C. 159—8 R. D. 486.

<sup>10</sup> *Jagan Nath v. Rangi Rai*, XVI U. D. 268.

of the tenancy ; but the mortgagee does not thereby become the tenant unless the landholder has accepted rent from him as the tenant.<sup>1</sup>

Leaving the village to avoid payment of arrears, followed by the landholder's putting in another person is abandonment.<sup>2</sup>

4. Clauses (a) and (b) seem to apply to fixed-rate tenants also.

Exproprietary and certain other tenants mentioned in clauses (d) to (f) of section 21 cannot sublet to anyone for a period exceeding five years (*vide* section 40.) Sub-section (2) cannot be taken to mean that the Act contemplates a valid sublease for a term exceeding five years in such cases, when the sublessee is an heir presumptive or reversionary heir,

Nor must it be supposed that subsection (2) permits subletting in contravention of section 40, the remedy for which is left unimpaired. The utmost that can be said is that in a case of subletting in contravention of that section, the landholder starts with a presumption of abandonment. *Any person on whom would devolve, e.g.,* the heir presumptive according to sections 35-37. When a tenant abandons and leaves the village without making any arrangement at all for the payment of the rent the zamindar is entitled to let it to another without waiting for the 5 years after the disappearance of the tenant as the case is not under sub-section (2).<sup>3</sup>

It will be noticed that under subsection (2) a tenant loses his interest if he does not resume cultivation within 5 years, even though the landholder's rent has been paid regularly.

5. Absence of a minor does not mean abandonment of the right to a holding by inheritance.<sup>4</sup> If a landholder takes no steps under section 88 and acquiesces in the occupancy of the land by a cousin the court may presume that he recognised the cousin as holding on behalf of the cousin.<sup>5</sup>

Where the mother of a minor tenant mortgaged a part of his holding with certain relations, left the rest of it with them, and took away the minor from the village and the holding was treated as abandoned and as the holding of the relatives at the same rent and then the minor redeemed the mortgage and sought possession, it was inferred that the mother had made an arrangement contemplated by sub-section (1), that the holding was not abandoned and the other relatives were trespassers.<sup>6</sup>

<sup>1</sup> *Murli Manohar v. Chunna*, XIV U. D. 277—14 L. R. Rev. 542.

<sup>2</sup> *Baldeo Singh v. Balkishan Das*, III U. D. 132—4 Rev. and Cr. L. J. 261—5 R. D. 534.

<sup>3</sup> *Raghu Raj Singh v. Badri Singh*, XIX U. D. 114—1938 R. D. 286 ; *Sukhua v. Sham Krishna*, XIX U. D. 122—1938 R. D. 272.

<sup>4</sup> *Muh. Nazim v. Laungi*, VI U. D. 29—5 L. R. Rev. 56—1923 R. C. 251—8 R. D. 147.

<sup>5</sup> *Ragho Prasad v. Bankey*, V U. D. 79—5 L. R. Rev. 226—1922 R. C. 275—7 R. D. 117.

<sup>6</sup> *Rama v. Ganeshi*, XIV U. D. 151—14 L. R. Rev. 331.

6. The conditions to be fulfilled under sub-section (3) are :—(i) ceasing to cultivate and leaving the neighbourhood, and (ii) leaving a person other than a prospective heir in charge. Then a rebuttable presumption of abandonment may arise after the expiration of the period for which the tenant could have validly sublet the holding.

A subtenant put in by a tenant who has ceased to cultivate personally must have been made so by a written sub-lease.<sup>1</sup> A subtenant put in by A, whose son, B, has either before or after A's death, left the village, does not become the tenant-in-chief until B is or is presumed to be dead.<sup>2</sup> A subtenant becomes the tenant-in-chief from the date of abandonment although the landholder keeps the name of the abandoning tenant in the papers.<sup>3</sup>

To prevent misunderstanding, the following points must be borne in mind. Mere subletting which a tenant may validly do is no evidence of abandonment at all, although by such subletting he ceases to cultivate. If a sublease is for a period exceeding one year or from year to year it must be by a written and registered instrument.<sup>4</sup> It must also be remembered that only a permanent tenure-holder or a fixed-rate tenant may sublet from year to year. In the case of other tenants there must be an interval of one year or three years (according to the class of the tenancy-in-chief) between two distinct sublettings. The effect of sub-section (3) is that where a subtenant is left to cultivate, for more than a year, or in some cases five years the landholder may infer abandonment. But if such arrangement was made and he consented to it in writing the fact that the lease is invalid for want of writing or registration or both, or contravenes the restrictive provisions of section 40 will not justify a landholder in acting on the assumption of abandonment.

7. Subsection (3) applies to persons, other than heirs presumptive or reversionary heirs left in charge, but without a written lease, for more than the period of legitimate subletting. If there is a valid written sublease for a period exceeding that period the subsection will not apply ; otherwise, the presumption of abandonment will apply, and the sub-tenant will be deemed to have become the tenant-in-chief after the lapse of the period from the date when the tenant ceased to cultivate.<sup>5</sup> The fact that the landholder's rent has been regularly paid is immaterial. It is always open to a subtenant to prove by independent evidence that the tenant abandoned his holding to the knowledge of the

<sup>1</sup> This modifies *Parbhu Narain Singh v. Sukhdeo*, III U. D. 71—4 Rev. and Cr. L. J. 19—5 R. D. 476 ; *Raja Singh v. Pargam Singh*, I U. D. 362—32 I. C. 586.

<sup>2</sup> *Husami v. Secy. of State*, 8 L. R. Rev. 207—1927 R. C. 143—VII U. D. 165—10 R. D. 238.

<sup>3</sup> *Kali Charan v. Dwarka Nath*, 8 L. R. Rev. 320—1927 R. C. 230—VIII U. D. 11—11 R. D. 258.

<sup>4</sup> Section 42

<sup>5</sup> This modifies *Jagdeo Singh v. Kawalpat*, 5 L. R. Rev. 9—1923 R. D. 259—VI U. D. 2—8 R. D. 61.

landholder, both as against the zamindar,<sup>1</sup> and as against the tenant-in-chief suing to eject him.<sup>2</sup>

A mortgagor left in occupation comes under subsection (3).<sup>3</sup>

If the occupier, who was originally a subtenant, begins to occupy the land on his own behalf, after the disappearance of the tenant, and pays rent to the zamindar, he becomes the tenant-in-chief from the date of the disappearance.<sup>4</sup> So where after mortgaging the holding to the zamindar, the tenant goes to live in another village, and the zamindar collects the full rent payable by the subtenant, there is abandonment and the latter becomes the tenant-in-chief.<sup>5</sup> Whether such collection is as sub-agent is a question of fact.<sup>6</sup>

*B* and *C* were sued for ejectment by *A* as his subtenants. They had been recorded as such and had been paying rent for 24 years direct to the zamindar at the rent payable by *A*; and no payment of rent by them to *A* was proved; and no written sublease was executed and no arrangement of the nature contemplated by section 87 (1) was agreed to by the zamindar. *A* was presumed to have abandoned the holding on the expiration of the period for which he could have sublet the holding; and *B* and *C* had therefore become the tenants-in-chief. It was also held that action under section 88 by the zamindar was not necessary to complete the abandonment.<sup>7</sup>

Where the presumption of abandonment arose under sub-section (3) and the tenancy rights became extinguished subsequent possession without the consent of the zamindar was that of trespassers.<sup>8</sup>

Where the tenant sues his sub-tenant for ejectment after the expiration of the period for which he could have validly sublet, and the zamindar had not accepted the sub-tenant as his tenant, the latter cannot rely on presumption of abandonment by the tenant.<sup>9</sup>

*A*'s father was entered as occupancy tenant in 1304 F. Later on *A*'s cousins were entered as occupancy tenants and then *mafrur* for a

<sup>1</sup> *Mu. Ali Nasir Khan v. Guptar*, V U. D. 270—9 Rev. end Cr. L. J. 95—4 U. D. Rev. 36—1923 R. C. 277—7 R. D. 464.

<sup>2</sup> *Ramanand v. Rajan*, V U. D. 525—1923 R. C. 180—7 R. D. 318.

<sup>3</sup> So held under Act II of 1901, *Narsingh v. Kariya*, IV U. D. 311; *Pir Ali v. Bishun Rai*, VI U. D. 370—11 Rev. end Cr. L. J. 98—6 L. R. Rev. 73—1924 R. C. 435—8 R. D. 275.

<sup>4</sup> *Chatter v. Bhagirath*, III U. D. 108—4 Rev. end Cr. L. J. 149—5 R. D. 514.

<sup>5</sup> *Ram Singh v. Kalyan Singh*, 1 L. R. Rev. 20—III U. D. 651—6 Rev. end Cr. L. J. 42—4 R. D. 446; *Ram Kishore v. Swarath Rai*, II U. D. 174—3 R. D. 80, but see *Ram Charan v. Bhagwan*, I U. D. 391, where collection of rent taken to be as agent of the tenant, and *Gobind v. Hakim Singh*, VII U. D. 183—10 R. D. 522—7 L. R. Rev. 313—1926 R. C. 393; *Tilak Kuer v. Raghubar Singh*, B. R. 15 of 1892.

<sup>6</sup> *New v. Kauleshar*, V U. D. 266—1922 R. C. 366—4 L. R. Rev. 58—7 R. D. 458.

<sup>7</sup> *Kharagjit v. Dharam Singh*, B. R. 7 of 1932—13 L. R. Rev. 49—XIII U. D. (B. R.) 87; see also *Kunnoo v. Abdul Hays*, XVII U. D. 16—1936 R. D. 130; *Kauleshar v. Sarju*, XVII U. D. 135.

<sup>8</sup> *Gaya Prasad v. Zulim Singh*, 1941 R. D. 285

<sup>9</sup> *Gharib v. Jhallar*, XVIII U. D. III—1937 R. D. 188.

number of years. Then *B* was entered as tenant, *A*'s suit to eject *B* as sub-tenant was dismissed on the inference that though *A*'s father might have been an occupancy tenant in 1304, later entries showed *A*'s cousins to be the occupancy tenants, and that they must be deemed to have abandoned the holding.<sup>1</sup>

Where the person in occupation is a lawful transferee, and not an agent or sub-tenant, there is no abandonment.<sup>2</sup>

Where a person ceases to cultivate his holding and there is no contract between him and the actual cultivator he is deemed to have abandoned the holding after the expiration of the period for which he could have validly sublet.<sup>3</sup>

If the person left in charge was not the tenant's heir the tenant cannot after the expiration of the period for which he could have validly sublet sue to get such person as his sub-tenant.<sup>4</sup>

8. Going away from the land without notice, and neither cultivating nor paying rent for it, justified the landholder in assuming that the holding has been abandoned,<sup>5</sup> but not if there was an arrangement with a near relation of the landholder for the regular payment of rent.<sup>6</sup>

Non-payment of rent is by itself not sufficient evidence of abandonment, but coupled with leaving the land uncultivated for some considerable time will justify the landholder in resuming possession,<sup>7</sup> if the tenant has left the neighbourhood. But whether the tenant's action amounts to abandonment is a question of fact depending upon his intention. Non-occupation and non-payment of rent are pieces of evidence from which an intention to abandon may be inferred. On the other hand circumstances may show the absence of any such intention, in which case there will be no abandonment.<sup>8</sup> Non-occupation of a holding for a short time will not justify the landholder in entering upon it.<sup>9</sup> So

<sup>1</sup> *Badri v. Genda*, 14 L. R. Rev. 537.

<sup>2</sup> *Mathura Mandal v. Ganga Charan*, 33 Cal. 1219.

<sup>3</sup> *Subhadri v. Raja Ram Singh*, XVI U. D. 532; *Shankar v. Fida Husain*, XVII U. D. 300—1936 R. D. 535.

<sup>4</sup> *Bhagelu v. Ram Padarath*, XVI U. D. 401.

<sup>5</sup> *Ram Chand v. Gora Chand*, 24 W. R. 344; *Muneer-ud-din v. Mahomed Ali*, 6 W. R. 67; *Nuddearchand v. Madhoosoodun*, 7 W. R. 123; *Chundermonee v. Sumbhoo*, (1864) W. R. 210, *Golam Ali v. Golab Soondery*, 8 Cal. 612, see also *Bhola Ram v. Munshi Lal*, 13 L. R. Rev. 317.

<sup>6</sup> *Sis Ram v. Ram Diya*, XVI U. D. 190.

<sup>7</sup> *Nuddear Chand v. Madhoosoodun*, 7 L. R. 153; *Muneer-ud-din v. Mahomed Ali*, 6 W. R. 67; *Ram Chand v. Gora Chand*, 24 W. R. 344; *Musayat ul-lah v. Noorjahan*, 9 Cal. 808; *Obhoy Charan v. Koylash*, 14 Cal. 715; *Nilmoney v. Sonatun*, 15 Cal. 17.

<sup>8</sup> See *Raja Gopala v. Collector of Chingleput*, 7 Mad. H. C. 98.

<sup>9</sup> *Radha Madhub v. Kali Charan*, 18 W. R. 41.

where land has been submerged, non-payment of rent during the period of submergence is not sufficient evidence of abandonment<sup>1</sup>

Transportation for life does not amount to abandonment provided the person leaves someone *e. g.*, his wife in the village to act for him.<sup>2</sup>

9. Mere abandonment by a tenant does not terminate the tenancy and his liability to pay rent.<sup>3</sup> The liability continues until the landholder shows by his act that he considers the tenancy at an end,<sup>4</sup> *e.g.*, by giving notice, entering upon occupation of the land, or letting it to another. If the tenant sues subsequently for recovery of possession on the ground of wrongful ejectment, the court has to determine whether he intended to end his interest when he left the land unoccupied.<sup>5</sup>

The section gives no right to a subtenant as against the zamindar but protects him against the tenant-in-chief if the zamindar treats the holding as abandoned. He will not become the tenant-in-chief without admission by the landholder.<sup>6</sup>

**88.** Subject to the provisions of section 36, where a tenant is presumed to have abandoned his holding the landholder shall file a notice in the office of the tahsildar stating that he wishes to treat the holding as abandoned and is about to enter on it accordingly and the tahsildar shall cause such notice to be served to be published in such manner as the Board by rule direct, after the expiry of a period of fifteen days from the date of service of such notice or of the publication thereof the landholder may enter upon the holding and let it to another tenant to take in under his own cultivation.

.. This section reproduces subsection (4) of section 107 of the Act of 1900 adding "subject to the provisions of section 36", "and after the expiry of a period.....may" and substituting "shall file" for "may file".

Section 36 relates to a female tenant (widow, mother, father's mother or daughter) who has succeeded to a male tenant and enacts that on abandonment of the whole or part of the holding the nearest surviving heir of the last male tenant as ascertained according to section 35, will succeed. The landholder will not be entitled to file a notice under section 88 in such a case, as there will be no presumption of abandonment. The rights of an heir may be barred by limitation.

<sup>1</sup> *Todar v. Mohan*, 2 Leg. Rem. 665; *Mazhar Ali v. Ramgat*, 18 All. 290—16 A. W. N. 56; *Wali v. Fida Husain*, 1 U. D. 380.

<sup>2</sup> *Debi Singh v. Sulehdia*, 3 Rev. and Cr. L. J. 182,—11 U. D. 337.

<sup>3</sup> *Balaji v. Bhikaji*, 8 Bom. 164; *Venkatesh v. Krishnaji*, 8 Bom. 160. *Mahomed Asmat v. Chundee Lal*, 7 W. R. 250.

<sup>4</sup> *Lal Mahomed v. Abdullah*, 1 C. W. N. 198.

<sup>5</sup> *Lal Mahomed v. Abdullah*, 1 C. W. N. 198; *Bhagwan v. Bissuwar*, 3 C. W. N. 46; see also *Narasimma v. Lakshman*, 13 Mad. 124.

<sup>6</sup> *Nar Singh v. Kesho Rai*, XIX U. D. 82—1938 R. D. 163.

The section also corresponds to section 21 (2) of the Oudh Act and to section 87 (2) of the Agra Act of 1901.

2. Now that we have "shall" instead of "may", compliance with the section is essential. This will override rulings to the contrary.<sup>1</sup> Under the old Act if without executing a written sublease, a tenant made over possession to others as sublessees or otherwise without the written consent of the landholder, the latter by proceeding under the section may treat the holding as abandoned, and sue the alleged sub-tenants under the section.<sup>2</sup>

Where a tenant is shown as *ghair qabiz* for 4 or 5 years, and the zamindar as holding the land as *khudkash*, without any proceeding being taken under the section the original tenant remains the tenant, although the supervisor qanungo has ordered removal of his name from the holding. The tenant, on establishing a contract of sub-tenancy with the defendant occupant may sue to eject him as sub-tenant.<sup>3</sup>

Where a tenant left his village more than 12 years ago and the landholder took possession of it as abandoned, though without filing a notice the tenancy is extinguished either under section 183 or because of adverse possession for more than 12 years.<sup>4</sup>

If the landholder without filing a notice lets the land to another, he cannot dispute the tenancy of this other on the ground that there was no valid abandonment without notice.<sup>5</sup> He could prove abandonment without taking steps under the section,<sup>6</sup> *e. g.*, that the tenant left the village and holding without proper arrangement more than 12 years ago.<sup>7</sup>

The mere fact that the sub-tenant of the holding paid rent direct to the zamindar is not enough to prove abandonment.<sup>8</sup> Nor is the fact that he has been out of possession for good many years, he having asserted his rights whenever occasion arose.<sup>9</sup>

<sup>1</sup> *Bhagaban Chandra v. Biseswari Debia*, 3 C. W. N. 45.

<sup>2</sup> *Ram Charan Lal v. Aladin*, 14 L. R. Rev. 837=XIV U. D. 503.

<sup>3</sup> *Chhedi v. Duija Singh*, XVIII U. D. 303=1937 R. D. 463.

<sup>4</sup> *Ghurpat Sahai v. Mahabir*, 1929 A. I. R. 411. 218=X U. D. (H. C.) 170=10 L. R. Rev. 201=113 I. C. 817=13 R. D. 318.

<sup>5</sup> *Indrojit Pratab Bahadur v. Mahabir*, IV U. D. 332=6 R. D. 521.

<sup>6</sup> *Naina v. Balwant Singh*, V U. D. 430=4 L. R. Rev. 188=1923 R. C. 226=7 R. D. 245. The view in this case held not to be generally followed in *Bali v. Kall Charan*, X U. D. 65; *Muh. Hafiz v. Kutab Ali*, 7 L. R. Rev. 352=1926 R. C. 446=VII U. D. 209=10 R. D. 576.

<sup>7</sup> *Ghurpat Sahai v. Mahabir*, 1929 A. I. R. 411. 218=113 I. C. 817=10 L. R. Rev. 201=X U. D. (H. C.) 170.

<sup>8</sup> *Sitlu v. Ram Sarup*, V U. D. 41=3 L. R. Rev. 158=1922 R. C. 37=7 R. D. 55.

<sup>9</sup> *Suga v. Shah Muh. Husain*, V U. D. 95=3 L. R. Rev. 255=1922 R. C. 35=7 R. D. 152



Where notice was not given, surrender or abandonment had to be proved.<sup>1</sup> In *Muh. Hafiz v. Kutab Ali*<sup>2</sup> abandonment was inferred from possession of the actual cultivator for over 19 years, payment of rent by him direct to the zamindar, and the recognition of his status as tenant by the zamindar who had sued him as such for arrears of rent.

Abandonment was inferred from the facts that the tenant neither cultivated the holding himself nor made any arrangement for its cultivation by others, and the zamindar made *batai* arrangements with others.<sup>3</sup>

4. Rules relating to assumption of abandoned land are given below.

**G. O. No 3771-I. A. 258, 1927, dated 12th October 1927.**

*Rules relating to assumption by landholder of land abandoned by tenant  
under section 107, Act III of 1926,*

## Revenue Court Manual Rules 183 to 186.

133. The notice to be filed by the landholder in the office of the Tahsildar for service on the tenant under section 107, clause (4) of the Act shall be written in the Persian and Nagri characters in the following form :—

Whereas you, *A, B* son of *C D*, caste....., resident of....., a tenant in mahal *X*, thok or patli *Y*, have abandoned the holding hereinunder specified, this is to give you notice under section 107, clause (4), Act III of 1926, that I, *E F*, son of *G N*, caste....., resident of....., your landholder, wish to treat the holding as abandoned and am about to enter on it accordingly.

<b>Number of field.</b>	<b>Area of field.</b>	<b>Rent of holding.</b>
	<b>Total area</b>	

(Signed).....; ....., *E. F.*

*Landholder or his outhorised agent.*

134. To the notice shall be appended a memorandum in the Persian and Nagri characters to the following effect:—

You are informed that the period within which a suit to recover possession of the holding may be instituted under section 99, clause (1), Act III of 1926, on the ground that you did not voluntarily abandon it,

<sup>1</sup> *Bali v Kali Charan*, X U. D. 65—10 L. R. Rev. 260—13 R. D. 432.

<sup>2</sup> VII U. D. 209=7 L. R. Rev. 352.

<sup>3</sup> *Dore v. Moti*, 14 L. R. Rev. 90=XIV U. D. 34.

is six months from the date on which the alleged wrongful dispossession took place.

135. The landholder or an agent authorized by him in this behalf shall sign each copy of the notice and as many copies shall be filed as may be required for service on the tenant under para 136.

136. The provisions of Order V of the First Schedule of the Code of Civil Procedure, 1908, for the service of summons shall apply to the service of notice filed under sections 105 and 107 (4) of the Act subject to any rules made by the Board as to the service of notice.

89. A landholder who enters upon a holding in contravention of the provisions of section 88 shall be deemed to have ejected the tenant otherwise than in accordance with the provisions of this Act within the meaning of section 183.

Application of section 183 to abandonment cases.

Section 89 is new, though based on section 107 (5) of the Act of 1926 which corresponded to sub-section (3) of section 87 of Act II of 1901. A presumption as to ejection of a tenant by his landholder otherwise than in accordance with the provisions of the Act will arise where a landholder (i) treats as abandoned a holding which has not been abandoned (under section 87) or (ii) enters upon a holding in contravention of the provisions of section 88 i. e., without filing a notice and action by the Tahsildar. The tenant will have three years to sue under section 183 for recovery of possession and compensation. If the suit is based on non-abandonment, the tenant may prove that he allowed a relative to remain in charge with an undertaking to pay the rent, and that he is prepared to pay the rent, and that the arrangement is of a very old standing.<sup>1</sup>

The court may also award him compensation for dispossession, but not for improvement in any event, it is submitted. For, if the abandonment is proved, the right to such compensation does not arise. The finding of the Tahsildar in a proceeding under this section is not evidence in a suit under section 183.<sup>2</sup>

#### *Premia, forced labour and cesses.*

90. No landholder shall take a premium for the admission of a tenant to a holding, and it shall not be a condition of any tenancy that the tenant shall render any service to or do any work for the landholder, whether for wages or not.

Taking a premium or making service a condition of tenancy prohibited.

This is new and forbids the taking of a premium or *nazrana* for the admission of a tenant to a holding, or the condition of any service or

<sup>1</sup> *Jagan Nath v. Ramjit Rai*, XVII U. D. 298.

<sup>2</sup> *Ram Charan v. Ali Baksh*, V U. D. 190=1922 R. C. 395=3 L. R. Rev. 475=7 R. D. 580.

work to be done to a landholder by any of his tenants, whether *begar* or for wages.

See section 236 which prescribes the penalty for infringement of the provisions of this section.

**91. (1)** Notwithstanding that a cess has been recorded under the provisions of section 56 or section 86 of the United Provinces Land Revenue Act III of 1901, no cess which is levied in accordance with village custom, other than a payment in kind which forms part of the rent payable for a holding, shall after such date as may be notified by the Provincial Government in the official *Gazette*, be recoverable in any civil or revenue court unless such cess is sanctioned under the provisions of sub-section (2).

(2) The Provincial Government may sanction the collection of any cess levied on account of any bazar fair and may impose on the collection of such cess any such condition regarding conservancy, police or other establishments as it thinks fit.

(3) The Provincial Government may, in case of doubt, declare whether any payment is a cess to which the provisions of sub-section (1) or sub-section (2) apply.

(4) A landlord may apply to the collector, that at the last revision of settlement the assessment of revenue on his land was based on the payment to him of cesses which are declared in this section to be irrecoverable, and on receipt of such application the collector shall, with the approval of and in accordance with rules made by the Board, remit such portion of the land revenue payable by the applicant as he finds to have been assessed on account of such cesses.

1. The section is new. *Cf.* section 86 of the Land Revenue Act. A thekadar is a tenant for the purposes of this section.

2. This is a very salutary provision against impositions which have been made from time to time by landholders and landlords. This gentry at times made a levy for every extra or new expense incurred by them, *e. g.*, *moterana* for the price of a motor car purchased by them.

*Abwab* is generally in the nature of a cess.

*Zaid mutalba*—The entry of *zaid mutalba* is not uncommon in patwari's records.

*Hari, i. e.*, a payment on each plough.

*Begar, i. e.*, unpaid labour or use of agricultural cattle or implement.

*Nazrana, i. e.*, forced present for some things.

*Bayai, i. e.*, weighmen's dues.

See notes on cesses in the notes to section 56 of any edition of the Land Revenue Act.

3. **Notwithstanding that a cess has been recorded etc.**—Section 56 applies only to the province of Agra, and provides for recording by a Record Officer of all cesses payable by tenants on account of the occupation of land and which are of the nature of rent payable in addition to the rent, or in lieu of which proprietary rights may be assigned under section 78(b) of the Land Revenue Act, and makes cesses not so recorded irrecoverable in any Civil or Revenue Court. The cesses recorded under section 56 are in the nature of *gaon kharch* and bear a definite proportion to the rent, for instance, an anna in the rupee. Section 86 of the Land Revenue Act authorises the settlement officer to record a list of all cesses other than referred to in section 56 levied in accordance with village custom, if generally or specially sanctioned by the Local Government, and enacts that no cesses not so recorded shall be recoverable in any Civil or Revenue Court.

Now all cesses or additional demands which fall under the denomination of *abwab*, *zail mutalba*, *hari*, *begar* or other like appellations in addition to the rent or sayar, are declared to be illegal and unenforceable in a court of law. The only exception is a payment in kind according to village custom which forms part of the rent payable for a holding and a cess sanctioned under sub-section (1).

Sub-section (4) provides as a counterpoise an equitable remedy to a landlord (not a mere landholder).

## CHAPTER VI.

### DETERMINATION AND MODIFICATION OF RENT.

#### *General provisions as to rent.*

**92.** A tenant on being admitted to the occupation of land is liable to pay such rent as may be agreed upon between him and his landholder.

Initial rent of tenant.

This section reproduces section 43 of the Act of 1926, which reproduced section 33 of the Act of 1901 and section 32 of the Oudh Act.

This cannot apply to permanent tenure-holders, fixed-rate tenants, and occupancy tenants whose rents have been fixed. Where both parties, honestly believing that one of them has lost his occupancy rights, entered into a fresh contract of lease at an enhanced rent, the lease was held to be valid and binding.<sup>1</sup>

Estoppel may determine the rent. For instance, A is a tenant of some lands for two years at Rs. 3. In the next 10 years the land is entered as the *khudkasht* of the landlord. Thereafter it is shown as in the occupation of A at Rs. 9 per year, the economic rent being only Rs. 4. In a suit under section 180 the finding was that a contract of tenancy at Rs. 9 a year, owing to the accrual of statutory rights, was created between the plaintiff and A; and the suit was dismissed. A could not

<sup>1</sup> *Sahiban v. Madho Lal*, A. L. J. 475.

in a suit for arrears of rent at Rs 9 contend that the agreed and recorded rent is only Rs. 4.<sup>1</sup>

An exproprietary tenant strictly speaking, is not admitted to the occupation of his holding. He gets it by operation of law. Hence the section does not apply to his case. His rent is determined under section 36, Land Revenue Act.

If a tenant pays more rent than that agreed upon, he cannot be made legally liable for the excess amount, although it is entered in the revenue papers.<sup>2</sup>

Where out of the rent reserved by a lease, the major portion was to go towards interest on a loan advanced at the time of the lease, and the balance only was to be paid, the contract is binding on the successor in interest of the lessor, and only rent at the rate of the balance can be recovered.<sup>3</sup>

**93.** The rent or rate of rent payable by a tenant shall be presumed as to rent. previously payable by him until it is varied in accordance with the provisions of section 98.

This section corresponds to section 47 of the Act of 1926, adding "it is varied in accordance with the provisions of section 98."

1. **Tenant.**—Includes a tenant of *sir*.<sup>4</sup>

2. **Previously payable.**—If an occupancy tenant orally agrees to pay enhanced rent and pays it accordingly, the new rent is the rent previously payable within the meaning of section 93<sup>5</sup>. Fraud alleged to have been committed as to a recorded or agreed rent must be proved.<sup>6</sup>

When the enhanced rent has been paid for a number of years and it has been embodied in the settlement record, it is deemed to be the one payable, unless the entry is proved to be erroneous.<sup>7</sup> Previously payable does not mean previously paid.<sup>8</sup> A person holding over after the expiration of a valid agreement is liable for the rent payable under it.<sup>9</sup>

<sup>1</sup> *Ganga Bishan v. Jageshwar*, XII U. D. 269=15 R. D. 712.

<sup>2</sup> *Rameshwar Misra v. Mathura Singh*, 14 L. R. Rev. 159=XIV U. D. 417.

<sup>3</sup> *Jai Deo Singh v. Mani Ram*, XI U. D. 137=14 R. D. 477

<sup>4</sup> *Manna Singh v. Sri Ram*, XVII U. D. 139=1936 R. D. 362.

<sup>5</sup> *Mackinnon v. Tilakchand*, 33 I. C. 417=I U. D. 170; *Mazhar Husain v. Ram Nath*, 2 Rev. and Cr. L. J. 280=II U. D. 63, see also *Abdul Haq v. Gayadin*, 2 Rev. and Cr. L. J. 243=II U. D. 94=3 R. D. 6 This is not true in the case of non-occupancy tenants, *Sajjad Ali v. Ghosi*, II U. D. 192=3 Rev. and Cr. L. J. 68=3 R. D. 94.

<sup>6</sup> *Sharafat Ullah v. Nur Muhammad*, 1938 A. L. J. (B. R.) 126.

<sup>7</sup> *Dukhi v. Bijai Bahadur Singh*, X U. D. 223=14 R. D. 91.

<sup>8</sup> *Ganpat v. Ram Gopal Singh*, 1934 A. I. R. All 954=14 L. R. Rev. 679=XIV U. D. H. C. 123=17 R. D. 798.

<sup>9</sup> *Hari Chand v. Jani*, I U. D. 381

**Varied in accordance with the provisions of section 98.—***g.* by a registered instrument,<sup>1</sup> or by order of a competent court,<sup>2</sup> or by a compromise filed in court competent to vary rents.

**94. (1)** When no rent has been fixed and any person has been admitted to the occupation of land, or permitted to retain possession of land by anyone having a right to admit or permit him with the intention that a contract of tenancy should thereby be effected, or becomes a hereditary tenant under the provisions of this Act, either he or the person entitled to admit or permit him may at any time during the period of occupation or within three years after the expiry of such period sue to have rent fixed thereon, and subject to the law of limitation as to arrears of rent, for a decree for arrears of such rent.

Suit for determination  
and for arrears of rent.

**(2)** In a suit under sub-section (1) the rent decreed shall be the rent payable in the year previous to the year of admission, permission or accrual of hereditary rights as the case may be, or if no rent was payable in such year, the rent shall be fixed in accordance with the provisions of this chapter.

1. Sub-section (1) reproduces section 45 of the Act of 1926, adding "or becomes a hereditary tenant under the provisions of this Act." Section 45 had removed a difficulty felt under the Act of 1901, under section 95 of which the court could not fix a rent for the first line and could only determine the rent agreed upon.<sup>3</sup>

Sub-section (2) reproduces in effect section 46 of the Act of 1926, substituting "in accordance with the provisions of this chapter" for "at the appropriate rate specified in section 59." Section 46 corresponded to section 32 (2) of the Oudh Act.

2. To make the section applicable, a person (a) must have been admitted to occupation or permitted to retain possession, or have become a hereditary tenant, (b) the admission or permission must be by a person having a right to admit, or permit, (c) with the intention that a contract of tenancy

<sup>1</sup> *Hardwari v. Surojibhan*, B. R. 6 of 1919—III U. D. 691; *Rameshwar v. Mathura Singh*, XIV U. D. 417—14 L. R. Rev. 159; *Hansa v. Balbir Saran*, XV U. D. 151—15 L. R. 212; *Amar Nath v. Mata Saran*, B. R. 3 of 1919—III U. D. 64; *Badam v. Abdul Hamid Khan*, XI U. D. 10—10 L. R. Rev. 309—13 R. D. 359.

<sup>2</sup> *Yagub Ali v. Dhan Singh*, 46 All. 316—22 A. L. J. 212—1924 A. I. R. All. 429—VI U. D. (H. C.) 59—8 R. D. 339.

<sup>3</sup> *Sanwal Singh v. Malkhan Singh*, II U. D. 363—3 R. and Cr. L. J. 73—3 R. D. 261; *Ram Charan v. Karimun-nissa*, 37 All. 12; *Ram Prasad v. Mathura Rai*, I U. D. 212; *Jalpa Prasad v. Munna*, II U. D. 214—3 R. D. 11; *Nathu Mal v. Roshan Lal*, II U. D. 494; *Bhagwan Din v. Jagan Nath Singh*, III U. D. 411—7 R. and Cr. L. J. 77—4 R. D. 225.

should thereby be effected. (a) makes the section inapplicable to permanent tenure-holders, fixed-rate tenants, exproprietary tenants and occupancy tenants coming under clause (a) of section 16 of the Act of 1926, whose rents have been fixed. (c) makes the section inapplicable to rent-free grantees. See notes to section 180, (b) refers to the right of admission or permission to retain. If the person admitting or permitting had such right at the time, but that right is negatived in a subsequent litigation, the tenant's status will not be affected.

Where a suit under section 180 is dismissed on the ground that the encroachment complained of had become an integral part of the holding the court may fix the rent of the encroached land.<sup>1</sup>

Where in a suit for arrears of rent the amount of rent is disputed and the court holds that no specific contract had been made between the parties, it cannot act under section 94.<sup>2</sup> This is because the arrears of rent suit was in the court of an Assistant Collector of the second class who has no power under section 94.

Unless a suit under the section is before the court it is not at liberty as against pleadings to make out a case that no rent had been fixed.<sup>3</sup>

The Commissioner cannot in a second appeal in a correction of *jama-bandi* case fix the rent in the absence of any data on the record.<sup>4</sup>

Where a father as *lambardar* leased land to his son at a very low rent, the succeeding *lambardar* may under clause (c) of section 55 read with section 94 get a declaration as to the proper rent, notwithstanding a previous collusive judgment fixing the rent between the father and the son.<sup>5</sup>

A difficulty may arise as to the right to sue. Section 94(1) entitles the person admitting or permitting to sue for fixation of rent. If it is found that such person had no title at all to the land, he will be incompetent to sue after such finding, but the person, in whose favour such finding is come to, is not mentioned expressly or impliedly in the section. Perhaps section 55(2)(c) read with section 61 give him a remedy.

It has been held that the section cannot be used to have rent fixed in cases in which no rent was payable under Act II of 1901, *e. g.*, of a rent-free grove which had been held by the defendant as a groveholder for the last fifty years.<sup>6</sup>

3. A suit for determination of rent is No. 8 of Group B of the Fourth Schedule and came under section 108(3a) of the Oudh Act. It lies in the court of an Assistant Collector of the first class in charge of the sub-division

<sup>1</sup> *Gomti Bibi v. Ashfaq Husain*, XII U. D. 71—12 L. R. Rev. 130—15 R. D. 268.

<sup>2</sup> *Sankata Prasad v. Sachida Nand*, 11 L. R. Rev. 130—XI U. D. 88—14 R. D. 331; *Sripata Ram v. Ram Gharib*, 1939 A. L. J. (B. R.) 57—XX U. D. 212—1939 R. D. 222.

<sup>3</sup> *Mahesh v. Badloo*, XX U. D. 340—1939 R. D. 378.

<sup>4</sup> *Bhagwant Singh v. Ram Kalia*, 14 L. R. Rev. 608—XIV U. D. 307.

<sup>5</sup> *Nasir Ali v. Sudershan Prasad*, XVI U. D. 554.

<sup>6</sup> *Asharul Husain v. Mahabir Singh*, X U. D. 55—10 L. R. Rev. 257—10 R. D. 451.

with an appeal to the Commissioner. It cannot be filed by the landlord,<sup>1</sup> except as provided by this or the Land Revenue Act, section 87. The limitation is as in the section<sup>2</sup> The court-fee is payable as in the Court Fees Act, i. e., on the annual rent asked to be fixed.<sup>3</sup>

In Oudh, when the suit was tried by the Collector, an appeal lay to the Commissioner on a law point only, and his decision was final. It could be brought within one year of the accrual of the cause of action.

4. **Sub-section (2)**, corresponds to section 46 of the Act of 1926. **Previous year**, i. e., the year immediately preceding the date of admission or permission and not the year preceding the matter being brought into court. The case of a sub-tenant after the termination of the principal tenancy is provided for by section 47. When his interest terminates with that of the tenant-in-chief, and he continues in cultivation, his case will probably be covered by section 94(2). A usufructuary mortgagee continuing in possession after the end of the tenancy occupies land without the consent of the landholder who may elect to treat him as a tenant or a trespasser. In the former case, his occupation as a tenant commences from the termination of the tenancy and the rent payable is the same as before. For purposes of section 94(2) the rent recorded under section 43 Land Revenue Act, shall be presumed to be the rent payable for the previous year.<sup>4</sup>

Where the defence is that no rent was agreed upon or fixed by competent authority, entries in patwari's paper as to the amount of rent do not prove that any rent was agreed upon or fixed, unless rent receipts or other evidence corroborate them.<sup>5</sup>

Where a tenant held over after the expiration of his lease and no fresh agreement as to rent was come to, the rent previously payable by him was considered the measure of rent for the period of holding over.<sup>6</sup>

**95.** When a tenant is ejected from a part only of his holding under a decree or order of a court, or, being entitled to surrender a part of his holding, legally surrenders such part, either he or his landholder may at any time apply to the court in which a suit for ejectment would lie for the determination of the rent of the remainder.

The section corresponds to section 32-A A of the Oudh Act and to section 124 of the Act of 1926. Section 124 of the Agra Act applied to cases of

<sup>1</sup> *Rasa Husain v. Banwari Lal*, XI U. D. 140—14 R. D. 481.

<sup>2</sup> *Sarju Singh v. Shri Radhika Prasad*, XI U. D. 705—15 R. D. 43.

<sup>3</sup> *Lalta Prasad v. K.-E.*, XVII U. D. 148.

<sup>4</sup> *Mazhar Husain v. Ram Nath*, 2 Rev. and Cr. L. J. 280—II U. D. 63—4 R. D. 534.

<sup>5</sup> *Muhammad Nazir Khan v. Abdul Subhan Khan*, II U. D. 213; *Sarabjit v. Court of Wards*, 3 O. L. J. 468—37 L. C. 27.

<sup>6</sup> *Raj Kuer v. Nabi Baksh*, 9 O. C. 296.



partial ejectment and section 32-AA of the Oudh Act to partial surrenders. The present section combines the two, and renders obsolete *Bhola Singh v. Ram Gharib*.<sup>1</sup> A holding may comprise occupancy and non-occupancy lands and the section may be utilised in a case of ejectment from the latter.<sup>2</sup>

What happens if no application under the section is made and the tenant continues in occupation of the part from which he was not ejected or which he did not surrender ?

The application is No. 1 of Group F of the Fourth Schedule and lies in the court in which a suit for ejectment would lie. The court-fee is that indicated by the Court-Fees Act. In Oudh, a suit lay under section 108 (3aa) and section 108 (12a).

**96.** (1) Save as provided in section 126 of this Act and in section 87 of the United Provinces Land Revenue Act III of 1901, when the rent of an ex-proprietary, an occupancy or a hereditary tenant or of a tenant holding on special terms in Oudh has been agreed upon, fixed, commuted, abated or enhanced in accordance with the provisions of this Act, the Agra Tenancy Act III of 1926, the Oudh Rent Act XXII of 1886, or the United Provinces Land Revenue Act III of 1901, it shall not be liable to enhancement or abatement until or unless—

(a) a period of ten years, or such longer period as may have been decreed or ordered, has elapsed ; or

(b) the period of the settlement of the local area in which the holding is situated has come to an end ; or

(c) the area of the tenant's holding has been increased by alluvion or decreased by deluvion or encroachment, or by the taking up of land for a public purpose, for or a work of public utility, or under the provisions of section 54 ; or

(d) the productive powers of the land held by the tenant have been increased by fluvial action, or by an improvement effected by or at the expense of the landholder, or decreased by an improvement made by the landholder or by any cause beyond the control of the tenant.

(2) Where the rent has been varied merely on any of the grounds mentioned in clauses (c) and (d) of sub-section (1) such variation shall not be considered in computing the period mentioned in clause (a) of that sub-section.

<sup>1</sup> XI U. D. 177.

<sup>2</sup> *Bishwa Nath Singh v. Sheoraj Singh*, XVI U. D. 470.

1. In the main, this section reproduces section 67 of the Agra Act, 1926.

The corresponding provisions in the Oudh Act were contained in sections 35-A and 35-B. These sections related to the rents of expropriary tenants.

2. **Save as provided** in section 126 or section 87 of the United Provinces Land Revenue Act. In a case of emergency, in a specified area or areas the provincial Government is empowered to appoint, whenever such emergency appears, an officer to make rent rates, settle all rents, to reduce or commute rents of all tenants, except permanent tenure-holders and fixed-rate tenants *Save as provided etc.* therefore means that clauses (a) to (d) do not apply to cases dealt with under section 126.

See section 87 United Provinces Land Revenue Act as to when rents are determined thereunder.

3 **Non-occupancy tenant.**—The section cannot be resorted to in the case of non-occupancy tenants.

4. Section 96 will not come into operation where no rent has been previously agreed upon, or fixed under one of the enactments named. The decision in *Bhola v. Muhammad Habib-ur-Rahman*<sup>1</sup> is not of much value now.

An agreement not to abate rent ceases to have effect where another reducing the rent has been come to.<sup>2</sup>

**Shall not be liable to enhancement or abatement.**—The prohibition is positive and cannot be contravened.

5. **Clause (a)**—An agreement to pay enhanced rent before the period mentioned is illegal, even if registered.<sup>3</sup>

This clause did not apply where a seven years' lease having expired on 30th June, 1926, the lessee in order to avoid the threatened ejectment agreed with the landholder to continue as tenant at an enhanced rent, the *kabuliat* embodying the enhancement being executed on 17th September, 1926.<sup>4</sup>

6. **Clause (b)**—Where at settlement, after a fixation of rent, the revenue is enhanced, the landlord may sue for enhanced rent in spite of clause (a), to which clause (b) is an alternative and not complementary, nor is clause (b) arbitrary.<sup>5</sup>

<sup>1</sup> 10 I. C. 460 affirmed on L. P. Appeal.

<sup>2</sup> *Achaibar v. Muh. Ibrahim*, II U. D. 314.

<sup>3</sup> *Behari v. Pateshwari Prasad*, X U. D. 144.

<sup>4</sup> *Todar v. Bhola Singh*, X U. D. 183=13 R. D. 620.

<sup>5</sup> *Bansidhar v. Tijjan*, XI U. D. 9=10 L. R. Rev. 304=13 R. D. 861.

If a settlement has taken place since the last fixation of rent, a suit for enhancement may be brought though 10 years have not elapsed from such fixation.<sup>1</sup>

7. **Revision.**—Selection of exemplar areas by the patwari and not by the Court is irregular and entitles the Board to interfere in revision.<sup>2</sup> When the rents of old occupancy holdings are sought to be enhanced, selection, as exemplars, of land which has been held for 12 or 14 years may lead to similar result.<sup>3</sup> Refusal to enhance grain rents was held to be open to revision in *Pirithi Singh v. Jit Singh*.<sup>4</sup> Adding directions as to distribution of rent after dismissing a suit for enhancement on an occupancy holding held with a fixed-rate holding for a lump sum was held to be *ultra vires*.<sup>5</sup>

No suit lies unless the rent of the individual holding has been separately fixed. Where a lump rent is payable in respect of two or more holdings, the rent of each should be first fixed, and then a suit for enhancement may lie.<sup>6</sup> Rent of grove cannot be enhanced under these sections,<sup>7</sup> nor of land held under a lease of 90 years.<sup>8</sup>

A taluqa in a permanently settled area in Benares Division means an area extending to the whole or part of a number of villages in respect of which a single engagement was taken, and unless it is proved that rent is payable for each village separately, a suit for enhancement of rent cannot be brought in respect of the fields in a single village when they form a portion of holding.<sup>9</sup>

97. If the rent of a non-occupancy tenant, not being a tenant of *sir* or a sub-tenant, is enhanced under the provisions of this Act the tenant shall be entitled to hold the land at the enhanced rent for a term of not less than five years from the beginning of the agricultural year in which such enhancement takes effect.

1. The section is based on section 69 of the Act of 1926, and applies only when rent has been enhanced by agreement or compromise or decree or order. (*Vide* the provisions of section 98).

<sup>1</sup> *Ram Partab Singh v. Amarpal Singh*, XI U. D. 82=11 L. R. Rev. 112=14 R. D. 315.

<sup>2</sup> *Bhagwan Singh v. Dulare Lal*, II U. D. 419.

<sup>3</sup> *Khuda Buksh v. Muhammad Mashar Hussain*, II U. D. 601.

<sup>4</sup> 3 Rev. and Cr. L. J. 25=II U. D. 200.

<sup>5</sup> *Chakauri v. Nakchedi*, I U. D. 259.

<sup>6</sup> *Chakauri v. Nakchedi*, 32 L. C. 734=I U. D. 259.

<sup>7</sup> *Bismillah Begam v. Chedda Singh*, III U. D. 526.

<sup>8</sup> *Ram Sarup v. Debi Din*, 6 U. P. L. R. Rev. (B. R.) 149=IV U. D. 624.

<sup>9</sup> *Sri Thakur Radha Kishunji v. Surju Roy*, B. R. 1 of 1925=VI U. D. (lxxii)=11 Rev. and Cr. L. J. 165=6 L. R. Rev. 140.

2. Agreement must be between the landlord and all the joint tenants and by a registered instrument,<sup>1</sup> but one of two co-tenants who alone agrees to an enhancement is bound if the agreement was for consideration.<sup>2</sup>

Rent enhanced by an unregistered instrument with a covenant that the landholder would not eject except for arrears was held not recoverable, and the tenant was not allowed to hold on.<sup>3</sup>

Where a tenant agrees to an entry being made as to a higher rent than he has been paying, this is an agreement to pay enhanced rent needing registration.<sup>4</sup>

Where a compromise in a suit for ejectment was filed and the suit was dismissed according to it, but the provision for enhancement of rent was not embodied in the decree, it was held that the compromise being unregistered could not cause enhancement of the rent.<sup>5</sup> Even if the terms of enhancement are noted in the decree in a suit for ejectment, but the suit is dismissed, the enhanced rent cannot be claimed in the absence of a registered agreement.<sup>6</sup> An agreement relating to the rent being foreign to the suit for ejectment requires registration.<sup>7</sup> So where the decree on a compromise merely directed that the rent should be entered in the papers.<sup>8</sup> This was modified by the Act of 1926 which put in the words "a compromise filed in adjustment of a suit or proceeding under this Act and recorded by the court under rule 3 of Order 23" Civil Procedure Code.<sup>9</sup> Provided the compromise was recorded under rule 3, a covenant for enhancement of rent in a compromise in an ejectment suit will be given effect to. Under the present Act the compromise, should be filed in the court which is competent to fix, commute,

<sup>1</sup> *Tungal v. Chandra Bhan*, IX U. D. (H. C.) 48—9 L. R. Rev. 63—12 R. D. 169.

<sup>2</sup> *Har Sarup v. Tohfa*, X U. D. (H. C.) 63—10 L. R. Rev. 69—12 R. D. 590.

<sup>3</sup> *Bhagwanti v. Jhulai*, 1 L. R. Rev. 115—6 R. and Cr. L. J. 268—2 U. P. L. R. (B. R.) 94—60 I. C. 260; *Sri Ram v. Ram Rup*, IV U. D. 698—5 R. D. 398; *Kunj v. Sheo Ram*, VI U. D. 364—11 R. and Cr. L. J. 95—6 L. R. Rev. 6—1924 R. O. 579—8 R. D. 269.

<sup>4</sup> *Ahmadi Begam v. Dhan Singh*, 1928 A. I. R. All. 365—116 I. C. 273—IX U. D. (H. C.) 159—9 L. R. Rev. 137—12 R. D. 241.

<sup>5</sup> *Dat Prasad v. Gopal Ram*, 14 A. L. J. 57—2 Rev. and Cr. L. J. 17; *Sajjad Ali v. Ghosi*, 2 Rev. and Cr. L. J. 270—II U. D. 192; *Hansa v. Balbir Saran*, 15 L. R. Rev. 212—XV U. D. 151.

<sup>6</sup> *Sohan Lal v. Raghubir Saran*, 1930 A. I. R. All. 118—1930 A. L. J. 324—122 I. C. 763.

<sup>7</sup> *Har Sarup v. Tohfa*, X U. D. (H. C.) 63.

<sup>8</sup> *Santu v. Abhainandan Prasad*, 1925 A. I. R. All. 324—10 R. and Cr. L. J. 345—81 I. C. 297—VI U. D. (H. C.) 276—5 L. R. Rev. 292—1924 R. C. 397—9 R. D. 334.

<sup>9</sup> See *Jai Sri Singh v. Parbhu Narain Singh*, 1935 A. L. J. 21—XV U. D. (H. C.) 281.

abate or enhance the rent. A compromise made by a mortgagee in possession is binding on the mortgagor.<sup>1</sup>

An oral enhancement is invalid, and binds neither party.<sup>2</sup>

Where a tenant has been for years voluntarily paying rent at an enhanced rate but without a registered instrument, he is not estopped from pleading that he was liable only for the old rent.<sup>3</sup>

This Section applies only when rent has been *enhanced* in the true sense of the word. When a tenant has been ejected and then reinstated in the holding on his executing a fresh *kabuliyat* at an increased rent the transaction is not an enhancement, but a new engagement by a person who had lost the status of tenant. Hence, the reinstated tenant is not entitled to hold on for five years<sup>4</sup> unless the *kabuliyat* fixes that term or more. Such an engagement does not require registration to legalise the enhanced rate.<sup>5</sup> If a decree for ejectment is not followed up by actual execution this section does not apply.<sup>6</sup>

A covenant in a term lease that the tenant would hold the land at a certain rental after the term does not protect the tenant from ejectment, on the expiration of the term.<sup>7</sup>

A lease in which provision is made for enhancement only in the last year of the term does not give the tenant a right to hold on for 5 years at the rate as last enhanced.<sup>8</sup>

But a tenant whose rent had been enhanced and who was entitled to hold for five years at the enhanced rent, with the result, may be, of acquiring occupancy rights before or at the end of this period, was not bound to accept a written and registered lease. His refusal to do so did not render him liable to ejectment.<sup>9</sup>

The section protects a tenant not only from enhancement for five years but also from ejectment for the same period.<sup>10</sup>

<sup>1</sup> *Patesri Ras v. Raghubans Ras*, 1 U. D. 375=III U. D. 38=1 R. and Cr. L. J. 129.

<sup>2</sup> *Ram Sarup v. Gajju*, 1927 R. C. 481=IX U. D. 28=9 L. R. Rev. 39=12 R. D. 272; *Ahmadi v. Dhan Singh*, 9 L. R. Rev. 137=IX U. D. (H. C.) 159, (although settlement entry is attested by the tenant; *Hukum Singh v. Ram Adhin*, 1927 R. C. 217=VII U. D. 74=8 L. R. 205=10 R. D. 224, and acted upon).

<sup>3</sup> *Badam v. Abdul Hamid Khan*, 10 L. R. Rev. 309=XI U. D. 10=13 R. D. 859.

<sup>4</sup> *Sobharam v. Chanda Kuar*, B. R. 2 of 1907.

<sup>5</sup> *Ram Kishore Singh v. Raghubir*, 1929 A. I. R. All. 78=111 I. C. 742=10 L. R. Rev. 110=X U. D. (H. C.) 83=13 R. D. 224.

<sup>6</sup> *Badlu v. Jhamola*, II U. D. 402=3 R. D. 272.

<sup>7</sup> *Sri Ram v. Kishori Lal*, 7 L. R. Rev. 352=VII U. D. 217=1926 R. C. 457=10 R. D. 586.

<sup>8</sup> *Lekha Mal v. Ram Rikh*, 2 U. P. L. R. (B. R.) 31=6 R. and Cr. L. J. 103=IV U. D. 110; *Hamfunnissa v. Ram Dayal*, 2 U. P. L. R. (B. R.) 36=56 I. C. 46=IV U. D. 101=6 R. and Cr. L. J. 131=6 R. D. 207.

<sup>9</sup> *Gendalul v. Suraj Narain*, B. R. 1 of 1912.

<sup>10</sup> *Raghunath v. Kishori Saran*, B. R. 1 of 1905.

A landholder may contract himself out of the right to enhance rent.<sup>1</sup>

**98.** Subject to the provisions of this Act, the rent of a tenant may be fixed, commuted, abated or enhanced only—  
 Method of varying rent.

(a) by registered agreement ;

(b) by decree or order of a revenue court ; or

(c) by a compromise filed in a suit or proceeding, provided that such compromise is filed in the court which is competent to fix, commute, abate or enhance the rent.

1. This section reproduces in effect section 50(1) of the Act of 1926, and extends to non-occupancy tenants also. subject however to the next section ; clause (c) is new. This clause provides for fixation, commutation, abatement or enhancement of rent by compromise filed in suit or proceeding, and the compromise must be filed in a court competent to fix, commute, abate or enhance the rent.

**Tenant**, see section 3(23) for meaning.

2. **Registered agreement**—The agreement must be in writing (and not oral) and registered or attested.<sup>2</sup> An agreement for enhancement not registered cannot be enforced in a revenue court.<sup>3</sup>

Preparation of a record-of-rights is not equivalent to execution of a registered instrument within clause (a).<sup>4</sup>

The mere entry of a figure in the *khatauni* endorsed by the parties and the kanungo is not an agreement for enhancement.<sup>5</sup>

A sale-deed is such instrument, and a clause in it against enhancement of the rent of the land reserved by the vendor is binding on the purchaser and his heirs while the vendor is alive.<sup>6</sup>

The agreement must be produced and proved. Oral evidence of an agreement to enhance will not do.<sup>7</sup> If the agreement relates to a tenancy

<sup>1</sup> *Jang Bahadur v. Muh. Yahia*, 1 U. D. 207=29 I. C. 649.

<sup>2</sup> *Muhammad Yunus Ali v. Kalian Singh*, 34 I. C. 369 (A)=2 R. and Cr. L. J. 172 ; *Bismillah v. Shukrullah*, IV U. D. 817=6 R. D. 398, (a note in the settlement paper that the rent was Rs. 30 but the tenant had agreed to pay Rs. 50 was not a registered agreement or an order.)

<sup>3</sup> *Prag Narain v. Angad*, 1922 A. I. R. All. 55=8 Rev. and Cr. L. J. 124=1922 R. C. 63=V U. D. (H. C.) 21=3 L. R. Rev. 232=70 I. C. 465=8 R. D. 518.

<sup>4</sup> *Ram Surup v. Ajudhia Prasad*, 9 R. and Cr. L. J. 178=1922 R. C. 597=V U. D. 380=4 L. R. Rev. 151=6 R. D. 42.

<sup>5</sup> *Ram Prasad v. Rajjan*, 1925 A. I. R. All. 123=5 L. R. Rev. 316=82 I. C. 332=VI U. D. (H. C.) 296=1924 R. C. 459=11 R. and Cr. L. J. 16=9 R. D. 452.

<sup>6</sup> *Surajbhan v. Deoki Nandan*, IX U. D. 35=12 R. D. 87.

<sup>7</sup> *Arjun v. Shimbhu Narain*, 1 A. W. N. 166.

and stipulates for a rent not exceeding one hundred rupees annually, it may, instead of being registered, be attested by a Revenue Court or a Revenue Officer not below in rank to a Kanungo, or by such other officer as the Local Government may, by general or special order in this behalf, appoint. (*Vide* section 57). An agreement to enhance holds good for the lifetime of the tenant, but not for the benefit of his heirs.<sup>1</sup> The fact that a non-occupancy tenant has paid rent at an enhanced rate for a number of years will not make the enhanced rent legally recoverable unless there is a registered agreement or order to that effect.<sup>2</sup>

The agreement must be to enhance the rent. If it merely provides for variation of the rates of rent according to the crops, it will not prevent the rent from being enhanced within ten years.<sup>3</sup> So an agreement, embodied in a *kabuliat*, to pay a certain amount of rent agreed upon by the parties in settlement of differences between them as to what had been the amount and character of the rent, and to avoid further litigation, is not one to enhance rent.<sup>4</sup> So an agreement, to pay a larger amount of rent on account of an increase in the area of the holding is not one for enhancement of rent,<sup>5</sup> the reason being that the section refers to the *rate* and not to the *amount* of rent.

It must be proved that the parties entered into a definite agreement. A mere informal arrangement will not do.<sup>6</sup> The agreement need not be in any particular form, *e. g.*, a *razinama* or *bazdawa* will suffice.<sup>7</sup> A widow may sign a *kabuliat* on behalf of her minor son to pay enhanced rent and the son on attaining majority will be bound by it.<sup>8</sup>

An agreement of a tenant to pay an enhanced rate of rent is illegal unless there has been a legal enhancement within ten years of the agreement.<sup>9</sup> Attestation of rents by a kanungo does not amount to an enhancement of rent by a registered agreement.<sup>10</sup> The agreement said that certain rents were being paid and not that they would be paid in future.

An agreement not to enhance rent in a compromise entered into by a person not competent to enhance rent, is not binding on the proprietor or his assignee.<sup>11</sup>

<sup>1</sup> *Achhaibar v. Muh. Ibrahim*, II U. D. 314=3 R. D. 194; *Sheobandhan Singh v. Moti Chand*, II U. D. 362=3 R. D. 262.

<sup>2</sup> *Sajjad Ali v. Ghosi*, 2 Rev. and Cr. L. J. 270=II U. D. 192; *Hansa v. Balbir Saran*, 15 L. R. Rev. 212=XV U. D. 151.

<sup>3</sup> *Jadoobar v. Behares*, 2 N. W. P. 437.

<sup>4</sup> *Sheo Sahay v. Ram Rachia*, 18 Cal. 333 (under section 29, Beng. Ten. Act).

<sup>5</sup> See *Satish Chunder v. Kabir-ud-din*, 26 Cal. 330 (under section 29, Beng. Ten. Act).

<sup>6</sup> *Ranjit Singh v. Pura Chunder*, B. R. 6 of 1884.

<sup>7</sup> See *Ranjit v. Kori*, B. R. 6 of 1883.

<sup>8</sup> *Watson & Co. v. Sham Lal*, 15 Cal. 8.

<sup>9</sup> *Bhola v. Muhammad Habib-ul-Rahman Khan*, 10 I. C. 465.

<sup>10</sup> *Bikarma Jit v. Inder*, 2 Rev. and Cr. L. J. 166=II U. D. 14=4 R. D. 486.

<sup>11</sup> *Hanuman v. Narain Prasad*, IV U. D. 465=4 U. P. L. R. (B. R.) 20=5 R. D. 236.

The stamp duty on agreements as to enhancement of the rents of exproprietary and occupancy tenants has been remitted by the Governor-General in Council.

The court should fix and declare the rent itself and not leave the rent to be worked by the patwari.<sup>1</sup>

When remission slips have been issued to the knowledge of both parties, a higher rent, though recorded or agreed to by a registered instrument, cannot be awarded in a rent suit.<sup>2</sup>

3. **Decree or order of court, i. e., of a competent court.**<sup>3</sup> The amount held in an arrears of rent suit by a competent Second Class Assistant Collector is the rent until subsequently varied, and the incorporation by him in the decree of a sum as *zaid* rent will not make the latter a part of the rent, as that would amount to enhancement of the rent, which is beyond his powers.<sup>4</sup>

Where at a revision of records the rent previously payable was increased by an amount as *zaid* or excess demand, there is variation by order of court,<sup>5</sup> so if it was reduced by a sum, the reduced sum is the rent.<sup>6</sup>

Such Court may be that of an Assistant Collector entertaining a suit under the Act, or of a Settlement Officer acting under section 87 of the Land Revenue Act. In the case of an exproprietary tenant, it may also be the Court of a Collector acting under sections 36 or 116, or 186, or of a Settlement Officer acting under section 74 (b) of the Land Revenue Act. An order to correct the *jamabandi* is not an order within the meaning of the clause. The decree or order referred to is the decree or order made by a Revenue Court on a landholder's application for enhancement of rent.<sup>7</sup>

4. **Compromise.**—A compromise filed in court in an ejectment suit conferring occupancy rights at an enhanced rent, if unregistered, was, under the Act of 1901 held to be effective as to the enhancement.<sup>8</sup>

The actual value of a suit for enhancement (for appeal to the Privy Council) is 20 times the enhancement.<sup>9</sup>

<sup>1</sup> *Sheo Shankar v. Sheo Narain Das*, V U. D. 127—1922 R. C. 68—9 and Cr L. J. 57—3 L. R. Rev. 428.

<sup>2</sup> *Badri v. Marium*, XIX U. D. 162—1938 R. D. 405—1938 A. L. J. (B. R.) 32.

<sup>3</sup> *Yaqub Ali v. Dham Singh*, 46 All. 316—22 A. L. J. 212—VI U. D. (H. C.) 59.

<sup>4</sup> *Ram Prasad v. Kali Prasad*, XIX U. D. 55—1938 R. D. 99.

<sup>5</sup> *Devi Charan v. Ram Shankar Lal*, B. R. 4 of 1934—XV U. D. (B. R.) 64—15 L. R. Rev. 419.

<sup>6</sup> *Mazhar Khan v. Sheikh Inayat*, XVIII U. D. 35—1937 R. D. 148.

<sup>7</sup> *Ganesh Baksh Singh v. Mutadin*, 1 I. C. 70.

<sup>8</sup> *Jaisri Singh v. Maharaja of Benares*, 1935 A. L. J. 21—A. I. R. All. 127—XV U. D. 281—15 L. R. Rev. 689, but see *Subedar Singh v. Mihi Lal*, XV U. D. 73—15 L. R. Rev. 97; *Khalilul Rahman v. Mahabir Rai*, XV U. D. 216—15 L. R. Rev. 341.

<sup>9</sup> *Lagni v. Murari Lal*, XI U. D. 90—11 L. R. Rev. 136—14 R. D. 225.



**99.** Nothing in this Act shall bar the right of a tenant to abatement of rent under section 11 of the Northern India Canal and Drainage Act VIII of 1873, or the right of a landholder to enhancement of rent under section 12 of that Act.

Saving of enhancement or abatement under the Northern India Canal and Drainage Act,

1. This section produces the effect in sections 53, 54, 67, section 70 (a) (ii) and section 70 (b) (ii) of the Act of 1926. It reproduces in effect section 50A of the Oudh Act.

2. **Canal Act 1873.**—Section 11 provides for abatement of rent as follows:—Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land, when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section 8, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

Section 12 reads:—If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such an enhancement shall be on account only of the water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other ground.

Section 12 therefore refers to restoration of the *status quo* on restoration of the water supply, the stoppage or diminution of which led to an abatement of rent under section 11. Tenants from year to year are not entitled to the benefit of the latter section. Abatement may be ordered only when the stoppage or diminution can be made the foundation of a claim for compensation under section 8, and the interruption reduces the value of the holding. Section 8 allows compensation for (a) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or underground, at the date of the Government notification under section 5 that the water of any river or stream flowing in a natural channel or of any lake or other natural collection of water shall be applied or used after a fixed date for the purpose of any existing or projected canal or drainage work; (b) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification; (c) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification; (d) damage done in respect of any right to a water-course or the use of any water in which any person is entitled under the Indian Limitation Act, 1877, Para. IV; (e) any other substantial damage not falling under any of the conditions in which no compensation can be awarded (presently noticed) and caused by the exercise

of any of the powers conferred by the Canal Act, 1873, which is capable of being ascertained and estimated at the time of awarding such compensation.

No compensation can be awarded for any damage caused by—(a) stoppage or diminution of percolation or flood ; (b) deterioration of climate or soil ; (c) stoppage of navigation, or of the means of drifting timber or watering cattle ; (d) displacement of labour.

**100.** Notwithstanding anything in this Chapter when a local area is under settlement, no suit for determination, commutation, abatement or enhancement of rent shall be maintainable under this Act until the time for making applications to the settlement officer under section 87 of the United Provinces Land Revenue Act, III of 1901, has passed.

The section reproduces in effect section 61(2) of the Act of 1926.

**101.** (1) Subject to the provisions of section 102, section 103, section 111 and section 126, in a suit in which rent is to be commuted, determined, abated or enhanced the court shall calculate the rent—

Rent how calculated for commutation etc. of rent.

- (a) in the case of occupancy tenants, in accordance with the rates sanctioned for occupancy tenants ;
- (b) in the case of ex-proprietary tenants and of tenants holding on special terms in Oudh, in accordance with rates which shall be less than the corresponding rates sanctioned for occupancy tenants by two annas in the rupee ;
- (c) in the case of hereditary and non-occupancy tenants, in accordance with the rates sanctioned for hereditary tenants :

Provided that in suits for the abatement of rent of sub-tenants or tenants of *sir*, the sanctioned rates shall be deemed to have been increased by thirty-three and one-third per cent. :

Provided further that for special reasons to be recorded, the Court may modify the rates applicable to any particular case.

(2) When rent which is payable partly in cash and partly in kind, is abated or enhanced under provisions of sub-section (1) the court shall not alter that portion of the rent which is payable in kind and shall abate or enhance that portion of the rent which is payable in cash, so that the amount of rent payable by the tenant, including the value, as determined by it, of that

portion of the rent which is payable in kind, shall be equal to the rent that would have been payable by the tenant if his rent had been payable wholly in cash :

Provided that, if it sees fit the court may order that the rent shall be payable wholly in cash.

1. The section corresponds to section 64 of the Act of 1926.

2. **Subject to the provisions of section 102, section 103, section 111, and section 126.**—Section 101 controlled by these sections. Subject to the measures for enhancement or abatement indicated by section 102, section 101 lays down the rules for calculations of rents of—

- (a) occupancy tenants in accordance with the rates sanctioned for occupancy rates ;
- (b) tenants holding on special terms in Oudh, and expropriary tenants in both provinces at rates sanctioned for occupancy tenants reduced by two annas in the rupees, *i.e.*,  $87\frac{1}{2}$  per cent. of sanctioned occupancy rates ;
- (c) hereditary tenants and non-occupancy tenants at rates sanctioned for hereditary tenants.

The increase by one-third of the rents of sub-tenants and tenants of *sir* in suits for abatement of their rent should be kept in mind.

As section 101 is also subject to section 103, sanctioned rates must mean such rates as are determined by the court where no sanctioned rates exist. The section is also subject to section 126 *i.e.*, where an emergency exists in an area in which any such holdings are situate, section 126 will prevail over section 101. Section 111 also controls section 101 so that in the special areas mentioned therein, that section will supersede section 101.

Under the Act of 1926, it was held that the parties could come to an agreement as to the rent, and the court was not bound to accept the rent that emerged from the application of roster rates.<sup>1</sup>

**102. (1)** In any proceedings for abatement of rent on the ground that the area of the holding has been decreased by diluvion or encroachment or the taking up of land for a public purpose or work of public utility or under the provisions of section 54 or for enhancement on the ground that the area of the holding has been increased by alluvion, the court shall determine the rent with reference to the existing rent and the decrease or increase in the area of the holding.

Basis of variation of rent in certain cases.

**(2)** In any proceedings for enhancement of rent on the ground that the productive powers of the holding have been increased by fluvial action or by an improvement effected by or at the expense of the landholder, or for abatement of rent on

<sup>1</sup> *Umrao v. Makund Ram*, XVI U. D. 104.

the ground that such powers have been decreased by an improvement made by the landholder or by any cause beyond the control of the tenant, the court shall determine the rent with reference to the existing rent and the increase or decrease of the productive powers.

(3) In an application for the determination of the rent of a portion of a holding under section 95, the court shall determine the rent with reference to the rent payable before ejectment or surrender and the loss of area due to such ejectment or surrender.

(4) In a suit for abatement of rent of an underproprietor or of a permanent lessee on a ground specified in the lease, agreement or decree, under which he holds, the court shall determine the rent in accordance with the terms of such lease, agreement or decree.

1. Section 102 is new.

Sub-section (1) shows that in a case of increase or decrease in area by fluvial action or taking up of land for a public purpose or a work of public utility, the enhancement or abatement of *existing* rent should be with reference to the increase or decrease in area. Sub-section (2) shows that in a case of increase in productive powers due to fluvial action or to improvement effected by or at the expense of the landholder or of decrease in productive powers due to a cause beyond the control of the tenant, the enhancement or abatement of *existing* rent should be with reference to the increase or decrease in productive powers.

2. **Proof.**—In a suit for enhancement under this section, the landholder must prove what the original area of the holding was and what its present area is, so as to show that the area has increased.<sup>1</sup> That is, it must be shown that the defendant cultivates more land than what he is paying rent for,<sup>2</sup> and that this is due to alluvion or the tenant's encroachment.

3. **Increased by alluvion.**—This shows that the tenant acquires the same right over the accreted land as he has over the land to which the addition has been made,<sup>3</sup> and the landholder cannot turn him out of the accretion as a trespasser.<sup>4</sup>

Alluvial means gradual accretion by fluvial action,<sup>5</sup> and an imperceptible increase.<sup>6</sup> A tenant to whose holding land has accreted has the

<sup>1</sup> *Suraj Kanta v. Baneshwar*, 24 Cal. 251.

<sup>2</sup> *Alij Khan v. Raghunath*, 1 C. W. N. 310.

<sup>3</sup> *Gobind Monee v. Dinobandhoo*, 15 W. R. 87; *Godai Rai v. Ramgobind*, 2 Agr., 260; *Gaurhari v. Bhola*, 21 Cal. 231; *Golam Ali v. Kali Krishna*, 7 Cal. 479.

<sup>4</sup> *Bhuggobut v. Doorgbijoy Singh*, 16 W. R. 95.

<sup>5</sup> *Eckowari v. Heera Lal*, 12 M. I. A. 136—11 W. R. P. C. 2.

<sup>6</sup> *Narendra Bahadur v. Achaibar*, 3 A. L. J. 453; *Lopes v. Muddun Mohun*, 13 M. I. A. 467; *Ritraj v. Sararas*, 27 All. 655; *Krishna Chandra v. Saesdan*, 2 A. L. J. 811.

same rights over it as he has over the original holding,<sup>1</sup> unless the accretion is sudden and not imperceptible<sup>2</sup> or lies in another village.<sup>3</sup> An accretion may be larger than the original area.<sup>4</sup> Land which after submergence reappears on its old site and is identifiable is not an accretion.<sup>5</sup> If submerged land reappears in another person's zamindari, both the landholder and the tenant lose their rights.<sup>6</sup>

4. **Increase by encroachment.**—This section does not mean that the tenant acquires the same rights over the land encroached upon as he has over the original. It merely points a way out to the landholder of dealing with a tenant who has added land to his holding by encroachment. He may treat him as a trespasser, and proceed under section 180<sup>7</sup> or under this section. (See also notes to section 180).

The tenant cannot compel the landholder to accept him as a tenant of the added land,<sup>8</sup> but if the landholder has once treated him as a tenant in respect of such land, he cannot subsequently regard him as a trespasser.<sup>9</sup> If the landholder accepts him as a tenant of such land and has the rent enhanced, the added land becomes part of the original holding so long as that holding continues.<sup>10</sup>

The position taken up here was adopted in *Shaikh Nihal Ahmad v. Kalka Singh*<sup>11</sup> There, at a settlement 36 years before the suit, an occupancy tenant being found in possession of excess land, which he had encroached upon, was recorded as tenant of it without rent. The Board held that he was a mere trespasser at that time; but since he had been occupying it for 36 years as an integral part of his holding without paying any additional rent, the land was held to have become by prescription an integral part of the holding for which no additional rent was payable. This case was followed in *Brij Bahadur Lal v. Baldeo*.<sup>12</sup> In *Sheoraj*

<sup>1</sup> *Bunsi Singh v. Kishan Singh*, II U. D. 453, *Ram Daur v. Partab Narain Singh*, XII U. D. 121; *Mahbub-un-nissa v. Mumtaz Ali*, III U. D. 41; *Ram Narain v. Ashiq Husain*, IV U. D. 507; *Ram Charan v. Har Prasad*, VI U. D. 475; *Partab Narain Singh v. Palakdhari*, B. R. 11 of 1918, III U. D. 22; *Ram Bachhan v. Jadui Rai*, III U. D. 23.

<sup>2</sup> *Ram Daur v. Pratap Narain Singh*, XII U. D. 121; *Izzat un-nissa v. Abdulla Khan*, II U. D. 206; *Srinath Das v. Charitra Rai*, II U. D. 359; *Gaya v. Kesho Prasad Singh*, V U. D. 232=5 L. R. Rev. 90.

<sup>3</sup> *Kauleshar v. Partab Narain Singh*, II U. D. 501.

<sup>4</sup> *Murari Lal v. Ram Ruch*, VIII U. D. 20=8 L. R. Rev. 116.

<sup>5</sup> *Sri Kishun v. Raghubar*, XII U. D. 116; *Gobardhan v. Kesho Prasad Singh*, IV U. D. 213.

<sup>6</sup> *Pitambar v. Chotey*, V U. D. 500.

<sup>7</sup> *Muh. Abdul Majid v. Bhagwati Singh*, V U. D. 431=4 L. R. Rev. 189=9 B and Cr. L. J. 212=1923 R. C. 139=7 R. D. 245.

<sup>8</sup> *Prohlad v. Kedar*, 25 Cal. 305.

<sup>9</sup> *Khondakar Abdul Hamid v. Mohini Kant*, 4 C. W. N. 508.

<sup>10</sup> *Gooroodas v. Issar Chundur*, 22 W. R. 246.

<sup>11</sup> B. R. 2 of 1912.

<sup>12</sup> 3 Rev. and Cr. L. J. 49=II U. D. 528.

*Singh v. Baikunth*,<sup>1</sup> the Board ruled that a fixed-rate tenant's rights did not attach to the added land, but occupancy rights could be acquired over it.

If the encroachment has continued for a considerable time, say for 15 or 16 years, the added land has become an integral part of the holding. Without getting the rent enhanced the landholder cannot demand extra rent.<sup>2</sup>

Where an increment in the area of a holding is due to encroachment on the land of a third person, the general words of the section seem to indicate that the tenant renders himself liable to pay enhanced rent to his landholder.<sup>3</sup>

Where a tenant encroaches on other land of his landholder, he may do so with the intention of acquiring proprietary title and not merely tenancy rights. If so, he must do such acts to the knowledge of his landholder as would convey to an ordinary prudent man the information that adverse possession is being asserted.<sup>4</sup>

5. **Public purpose.**—*e.g.*, for railway purpose,<sup>5</sup> or for public road.<sup>6</sup>

6. **Increase or decrease in productive powers.**—Any increase or decrease in the productive powers of the land not due to the tenant is a good cause for enhancement, or abatement of rent. For enhancement, the increase in productive powers should be due to an improvement effected during the currency of the present rent otherwise than by or at the expense of the landholder. See section 3, clause (8) as to meaning of 'improvement', and sections 65 to 68 as to who can make an 'improvement.' By the expression "increase in the productive powers" is meant not the capacity for realising a higher rent for building or other purposes, but an increase of the productive powers of the land itself.<sup>7</sup> So an increase in the value of land owing to considerable portion of the area in which the land is situate being swept away by a river is not within the meaning of the expression.<sup>8</sup> The increase must be of a permanent character or likely to last for a considerable time.<sup>9</sup> It may be due to natural agencies,<sup>10</sup> or to an embankment constructed at the expenses of

<sup>1</sup> 2 Rev. and Cr. L. J. 1—II U. D. 46.

<sup>2</sup> *Harakh Chand v. Sahadeo*, XVI U. D. 549.

<sup>3</sup> See *Nuddiar Chand v. Msa Jan*, 10 Cal. 820.

<sup>4</sup> *Krishna Govinda v. Bunka Behari*, 13 C. W. N. 698; *Wali Ahmad v. Tota*, 31 Cal. 397.

<sup>5</sup> *Mahtabchand v. Chittro Coomares*, 16 W. R. 201; *Uma Shankar v. Tarini Chundur*, 9 Cal. 571; *Watson v. Nistarini*, 10 Cal. 544.

<sup>6</sup> *Deen Dayal v. Thukroo*, 6 W. R. Act X 24.

<sup>7</sup> *Bisseshur v. Wooma Churan*, 19 W. R. 122.

<sup>8</sup> *Abdur Rahman v. Woomacharn*, 8 W. R. 330.

<sup>9</sup> *Kristo Mohan v. Huree Sunker*, 6 W. R. 235; *Abdul Ganee v. Bhutto*, 22 W. R. 350.

<sup>10</sup> *Abdul Ghanee v. Bhutto*, 22 W. R. 350; *Chooramun v. Dunraj*, 5 Cal. 56 (under section 30, Beng. Ten. Act.)

Government<sup>1</sup> or a Railway Company. The increase in the productive powers must exist at the date of the suit,<sup>2</sup> and must be likely to continue for some time afterwards.

In determining the question whether an increase has been made in the productive powers of the land, an average of four or five years should be taken, the probable result of an exceptionally bad season should not be taken into consideration.<sup>3</sup>

A frequent case of improvement is making unirrigated land irrigable. Where this is done at the expense of the landholder, he is entitled to demand rent at irrigated rates.<sup>4</sup> Where a tenant does not avail himself of the method of irrigation provided by his landholder, his rent is not liable to be enhanced as the productive powers have not increased on account of the improvement.<sup>5</sup>

If the tenant makes an improvement, e.g., a well, to which the increase in productive power is due, he can claim allowance for it.<sup>6</sup> The fact that he received a reduction for high caste, does not disentitle him to the allowance.<sup>7</sup>

7. **At the expense of the landholder.**—An improvement due to the agency or expense of the tenant is not a reason for enhancement,<sup>8</sup> but this does not mean that an improvement effected at a distant time by a tenant or his ancestors will prevent the landholder from enhancing rent.<sup>9</sup> The particular improvement relied upon by the tenant should be proved to be the cause of the increase in productive powers within the currency of the rent sought to be enhanced.

Where it is proved that the value of similar lands in the same locality, but not sharing the special advantages resulting from works of improvement erected or effected by or at the expense of the defendant-tenant or his ancestor, has been increased by natural causes, it must be assumed that the lands of the defendant owe their increased value to that extent to natural causes, and are to that extent liable to enhancement.<sup>10</sup>

<sup>1</sup> *Jadub Chander v. Etwaree*, Marsh. 498—2 Hay, 599; *Piran v Ram Buz*, 2 Agra 346.

<sup>2</sup> See *Brojonath v. Grant*, 22 W. R. 13.

<sup>3</sup> *Sreesh Chandra v. Assimonissa*, 7 W. R. 234.

<sup>4</sup> *Ikram Ali v. Babu Lal*, 1 N. W. P. 178.

<sup>5</sup> See however, *Sheo Charan v. Basant*, 3 N. W. P. 282; *Ram Jatan v. Mehdee*, 4 N. W. P. 282.

<sup>6</sup> *Shobarani v. Mewa Lal*, III U. D. 150—5 R. D. 548.

<sup>7</sup> *Ram Parson Das v. Kishore*, 2 L. R. Rev. 202—IV U. D. 509—5 R. D. 281

<sup>8</sup> *Ounda v. Rahim Shere Khan*, 3 N. W. P. 138.

<sup>9</sup> *Sheo Narain v. Odhun Singh*, 1 N. W. P. 258, See also *Mujlis v. Mohur*, 3 Agra, in which it was held that rent could be enhanced after a lapse of such a time as may be fairly estimated as sufficient to enable him to recover his outlay and a just share of profit in respect of it. See also *Prasono Coomar v. Radha Nath*, 7 W. R. 97.

<sup>10</sup> *Chooramun v. Dunraj*, 5 Cal. 16,

Increase in productive powers due to a canal not made at the tenant's expense or labour is also a reason for enhancement.<sup>1</sup> But he can fairly ask that the expenses, such as the cost of making ducts and the payment of canal rates, should be calculated and deducted from the total amount of increased value, and interest on the capital so spent may also be deducted.<sup>2</sup>

The burden of proving that an admitted increase in productive powers is due otherwise than to the agency of the tenant is on the landlord.<sup>3</sup>

8. **Decrease in productive powers, area.**—Where the productive powers have decreased, but the cost of production has increased, the formula to be applied in determining the rent is:—The average value of the produce before the decrease in the productive powers of the land will be to the average value of the present decreased produce, minus the increased cost of cultivation, as the rent previously paid will be to that which the land ought now to pay.<sup>4</sup> The decrease must have been from causes beyond the tenant's control.<sup>5</sup> The *onus* of proving to what deduction he is entitled and of precisely showing what lands have disappeared by diluvion lies on the tenant.<sup>6</sup> The decrease in the area must be real, and not due merely to differences in the length of the measuring poles in use at different periods.<sup>7</sup>

9. **Sub-section (3)** refers to an application under section 95, *i.e.*, reduction of rent on partial surrender or ejectment.

10. **Sub-section (4).** In the case of an under-proprietor or permanent lessee, a ground for abatement pleaded must be one specified in the lease, agreement or decree and the extent of the reduction will be determined by the terms of such lease, agreement or decree.

**103.** In any district, part of a district or local area for which rent-rates have not been determined, the court shall decide any question relating to the commutation, determination, abatement or enhancement of rent after making a local inspection and considering the rent generally payable by tenants of the same class for land of the same class in the vicinity.

Procedure when rent-rates not determined.

1. This section corresponds to section 59 (4) of the Agra Act, 1926, and section 51G, clause (2) of the Oudh Act, 1886.

2. The section applies where rent rates have not been determined. Local inspection is necessary. The Court will have to consider the rent generally payable by similar tenants for similar land.

<sup>1</sup> *Piran v. Ram Buksh*, 2 Agra 346.

<sup>2</sup> *Mahepat v. Lok Inder*, 2 Agra, 179.

<sup>3</sup> *Poolin Behari v. Watson*, 9 W. R. 190.

<sup>4</sup> *Shoudaminee v. Shookool Mahamed*, 7 W. R. 94.

<sup>5</sup> *Munsoor Ali v. Hasey*, 11 W. R. 291.

<sup>6</sup> *Savi v. Obheynat*, 2 W. R. Act X 27.

<sup>7</sup> *Babun v. Shih Koomaree*, 21 W. R. 404 ; *Pertab Chunder v. Omur*, 25 W. R. 89, affirmed at p. 212.



The court has to act according to law and cannot rely on any economic slump.<sup>1</sup> The court could and did often accept an agreement as to the rent of an expropriatory tenant.<sup>2</sup>

3. Rules of procedure under section 59 (4) of the Agra Tenancy Act and section 51 G (2), Oudh Rent Act.

Revenue Court Manual Rule 95 prescribes the procedure for determining fair and equitable rates of rents for land of the same class or classes of soil as follows :—

1. A statement in the form prescribed in the Appendix to these rules shall be prepared for the assessment circle in which the land in suit is situated. For part A of the statement the figures shall be taken from the latest completed khatauni. In part B the incidence of valuation of the occupancy area of settlement at circle or modified village rates will in general be ascertainable from the aggregate assessment statement of the circle. In case the aggregate assessment statement of the circle is not available the incidence of the circle can be calculated by entering the necessary figures from the assessment statement of each village or mahal in the same form as in part A and totalling them. Similarly the incidence of valuation of non-occupancy (or statutory) land settlement at circle or modified rates shall be ascertained and entered the prescribed statement.

2. The soil classification and the soil ratios of the settlement rates the last settlement shall be accepted for the purpose of accepting prescribed statement.

3. The percentage of increase in the rental incidence of the occupancy and statutory holdings shown in the last khatauni over the incidence of the valuation at settlement rates having been ascertained, that percentage as shown in lines C and F of part B of the prescribed form shall be added to the circle rates of settlement. The rates thus ascertained shall be called the "*prima facie* prevailing rates of the circle."

4. If in the case of any village the circle rates were modified at the last settlement, and village rates determined, the "*prima facie* prevailing rates of the circle" shall also be modified for that village in the same proportion and the modified rates shall be called the "*prima facie* prevailing village rates" for that village.

5. The court shall then make a local inspection. Ordinarily the inspection shall be confined to the village or villages for which suits have been instituted, but if necessary the court may inspect other representative villages in the circle for the purpose of arriving at a rateable basis for comparison.

<sup>1</sup> *Uma Bux Singh v. Chandrapal Singh*, XV U. D. 501—16 L. R. Rev. 66.

<sup>2</sup> *Mukta Prasad v. Bhup Singh*, XIV U. D. 127—14 L. R. Rev. 88.

This is essential.<sup>1</sup>

6. The Court shall during the course of inspection determine whether there are reasonable grounds for revising the settlement soil classification, and in case there have been changes, such as extension of irrigation or physical deterioration since the last settlement which makes the revision of the soil classification necessary, the court shall revise it either for the fields in suit, if there are few, or for the whole village if that is more convenient.

7. For the purpose of revising the soil classification the Court shall make a detailed inspection. In other cases a detailed inspection of every field in suit shall not be necessary. The Court shall, however, pay special attention to land which either the plaintiff or the defendant alleges to have undergone a change in productivity since the last settlement.

8. During the course of inspection, the Court shall also check the soil ratios of the settlement rates to ascertain whether they still hold good.

9. Finally, the Court shall check the correctness of the "*prima facie* prevailing rates" both of the assessment circle generally and of the villages in which suits have been instituted by comparing them with rates actually quoted and found to prevail in the village in question and in the villages inspected. The Court shall then determine the rate generally payable by tenants for land of the same class or classes of soil within the meaning of section 59 (4) of the Agra Tenancy Act, III of 1926, or section 51 G (2) of the Oudh Rent Act, XXII of 1886, as the case may be.

10. For each village inspected, the Court shall record an inspection note containing the following particulars :—

- (i) the *prima facie* prevailing rates of the assessment circle ;
- (ii) the condition of the village found to exist at inspection ;
- (iii) a statement whether the settlement soil classification was at inspection found to require alteration, and, if so, a brief statement of the alterations made ;
- (iv) the rates which the Court has at inspection found to be the rates generally payable and which it considers to be the rates which should be held to be the fair and equitable rates for that village within the meaning of section 59 (4) of the Agra Tenancy Act or section 51 G (2) of the Oudh Rent Act, 1886, as the case may be.

11. The inspection note or a copy thereof shall form part of the record of the case.

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<sup>1</sup> *Pancham Khan v. Nanda Kishore*, XIV U. D. 123—14 L. R. Rev. 295.

## APPENDIX

PART A.	Assessment circle.	Village.	Total occupancy area of the last year for which figures are available.	Total occupancy rental of the last year for which figures are available.	Occupancy incidence of the last year for which figures are available.	Total statutory area of the last year for which figures are available.	Total statutory rental of the last year for which figures are available.	Statutory incidence of the last year for which figures are available.
	1	2	3	4	5	6	7	8

## PART B—

- (a) Occupancy incidence of the last year for which figures are available (Column No. 5 of Part A.)
- (b) Incidence of valuation at settlement at circle or modified rates.
- (c) Percentage of (a) and (b).
- (d) Statutory incidence of the last year for which figures are available (Column No. 8 of Part A.)
- (e) Incidence of valuation of non-occupancy (or statutory) at settlement at circle or modified rates.
- (f) Percentage of increase of (d) and (e).

The following instructions have been issued as regards suits for enhancement, etc. :—

1. All suits for enhancement, abatement and commutation of rent relating to the villages in one assessment circle should be dealt with at the same time for the purpose of determining the fair and equitable rates of rent within the meaning of section 59(4) of the Agra Tenancy Act, 1926, or section 51 G (2) of the Oudh Rent Act, XXII of 1886.

2. (a) The same officer should :—

- (i) be in charge of proceedings to ascertain the *prima facie* prevailing rates ;
- (ii) make the local inspection and record the inspection note ; and
- (iii) decide the suits.

His work should, during the preliminary statistical examination and the inspection, be carefully controlled and supervised by the district officer.

(b) In case of leave, transfer, death, etc., of an officer, the provisions of Rule 15 of Order XVIII of the First Schedule of the Code of Civil Procedure, 1908, will apply.

*Rent-rates and appointment of rent-rate officer.*

**104.** In any district, part of a district, or local area for which rent-rates have been determined, the sanctioned rates for the purposes of this Act shall be—

- (a) the rates determined at the latest settlement or the latest revision of settlement made under the United Provinces Land Revenue Act, III of 1901 ; or
  - (b) the rates determined under the Agra Tenancy Act, III of 1926, or the Oudh Rent Act, XVII 1886, as the case may be ; or
  - (c) the rates determined under the provisions of this Act,
- whichever are the latest.

1. This section corresponds to and reproduces to a certain extent section 59 of the Act of 1926. *Cf.* section 51-F of the Oudh Act.

2. This section applies only to a district or part of a district for which rent rates have been determined as indicated in clauses (a) to (c). Where such rates have been determined, the sanctioned rates are those thus determined.

*Clause (a).—The rates determined at the latest settlement under the Land Revenue Act.* Section 63 of that Act provides for selection of rent-rates.

*Clause (b).—The rates determined under the Agra Tenancy Act or the Oudh Rent Act.* Sections 57, 58 of the Agra Act of 1926 and section 51-D and 51-E of the Oudh Act provided for the determination of rent-rates.

*Clause (c).—The rates determined under this Act.* Sections 109 to 112 provide for this.

**105.** (1) If the rent-rates referred to in section 104 do not distinguish between occupancy and non-occupancy or statutory tenants, such rates shall be deemed to be sanctioned rates for both occupancy and hereditary tenants.

(2) If the rent-rates referred to in sub-section (1) distinguished between occupancy and non-occupancy or statutory tenants, the rates sanctioned for either non-occupancy or statutory tenants shall be deemed to be sanctioned rates for hereditary tenants.

This section reproduces in effect sub-section (3) of section 59 of the *Agra Act*.

Where the rent-rates referred to in section 105, did not distinguish between occupancy and non-occupancy or statutory tenants, the rates determined there under shall be deemed to be the sanctioned rates for both occupancy and hereditary tenants; but if they so distinguish, the rates sanctioned for either non-occupancy or statutory tenants shall be deemed to be sanctioned rates for hereditary tenants.

**106.** Notwithstanding anything to the contrary in the *United Provinces Land Revenue Act, 1901*, the Provincial Government may, by notification in the official *Gazette*, order that rent-rates shall be determined for any specified district or part of a district or local areas whether by revision of the most recent rent-rates or otherwise and may appoint an officer having powers not less than those of an assistant collector of the first class, hereinafter called a rent rate officer, to propose rent-rates for occupancy and hereditary-tenants in accordance with the provisions of this Act and with rules made by the Board.

Compare section 57(1) of the *Agra Act* and section 51-D of the *Oudh Act*.

**107.** When rent-rates have been determined under the provisions of this Act for any district, part of a district or local area they shall not again be determined, until a period of 20 years has elapsed, or the term of settlement of such district, part of a district or local area has expired :

Provided that the Provincial Government may order the determination of rent-rates at an earlier date on the ground that there has been a substantial rise or fall in the price of agricultural produce or of any particular form of produce :

Provided further that the Provincial Government may postpone determination of rent-rates for such period as it may deem fit either on the ground that there has been no substantial rise or fall in the price of agricultural produce or on grounds of administrative convenience.

The section is new altogether. Cf. section 56 of the *Agra Act* and section 51-C of the *Oudh Act*.

It fixes the duration of rent-rates determined or revised. The rates determined cannot be altered for 20 years or the expiration of the term of the current settlement, whichever comes first, but the Provincial Government may order revision of rent-rates earlier because of a *considerable* rise or fall in the prices of agricultural produce or of any form of produce of a substantial character. The last portion is very vague and indefinite. Such revision may be postponed or suspended as in the second proviso.

**108.** (1) In addition to proposing rent-rates according to the provisions of this Act, the rent-rate officer shall, if so empowered by the Provincial Government, decide suits for the determination, commutation, abatement and enhancement of rent in accordance with the provisions of this Act.

(2) Such suits may be instituted in his court within such period as may be fixed by him with the sanction of the Board.

*Cf.* section 57(1) of the Agra Act, and section 51-D(i) of the Oudh Act.

Sub-sections (1) and (2) should be noted. A rent-rate officer may, if so empowered by the Government, decide suits for the determination, commutation, abatement or enhancement of rent, and suits therefor will have to be instituted in his court within such period as may be fixed by him with the sanction of the Board.

A suit for the determination, abatement, enhancement or commutation of rent is at item 9 of Group B of Schedule IV.

*Procedure in determining rent-rates.*

**109.** (1) If the local area has previously been divided into assessment circles under the United Provinces Land Revenue Act, 1901, the rent-rate officer shall propose separate rates for each circle and for each separate class of soil previously demarcated therein, unless by order of the Board the circles or the classification of soils, or both are revised by him.

(2) If a local area has not been so divided into assessment circles or if a classification of the soil thereof has not been so made or if the Board order a revision of the existing circles, or soil classification or both, the rent-rate officer shall make circles and classify the soils in the manner prescribed by section 63 of the United Provinces Land Revenue Act, 1901, and by rules made under section 62 of that Act, and shall propose rates for each class of soil in each circle.

This corresponds to and reproduces to a large extent sub-sections (2) and (3) of section 57 of the Act of 1926 and the same sub-sections of section 51-D of the Oudh Act.

**110.** (1) The rates proposed by the rent-rate officer for hereditary tenants shall be such as will result in rents payable without hardship over a series of years by cultivating hereditary tenants with substantial holdings and shall be based on genuine and stable rents paid by such tenants.

(2) In considering whether the genuine and stable rents paid by such tenants are payable without hardship over a series of years the rent-rate officer shall have regard to and compare—

(a) the level of rents paid by tenants who held or were admitted to land at different times and in particular the level of rents agreed to by tenants who were admitted to holdings in or between the years 1309 Fasli and 1313 Fasli ;

(b) the prices of agricultural produce prevailing at such times ;

(c) changes in the crops grown and in the amount of the produce ;

(d) the value of the produce with a view to seeing that the valuation of the holding of hereditary tenants at the proposed rates does not exceed one-fifth of such value ;

(e) the expenses of cultivation, and the cost to the cultivator of maintaining himself and his family.

(3) In proposing rates for occupancy tenants in Agra the rent-rate officer shall have regard to the rates which he has proposed for hereditary tenants, and also to the rents actually paid by occupancy tenants, distinguishing between holdings of old and of recent standing. In Oudh the rates proposed for occupancy tenants shall be two annas in the rupee less than the corresponding rates for hereditary tenants

(4) The rent-rate officer shall also record for each village whether the rates proposed by him are applicable without modification or the extent to which they require modification either for the village as a whole or for a specified area or class of soil therein, and in their application to such village, area, or class the rates shall be deemed to be modified accordingly.

This section corresponds to and reproduces in effect sub-sections (4) to (7) of section 57 of the Agra Act. Cf. sections 51-D (4) to (6) of the Oudh Act.

Clause (e) of sub-section (2) introduces with the words "and the cost to the cultivator of maintaining himself and his family" a rule which may not be found to work uniformly. The word "family" is capable of a wide conception which may embrace mother, father, brothers and sisters, if not others, and of a narrower conception confined to wife, sons and daughters and probably their children living with the tenant, and officers may take different views about the matter

111. The rent-rate officer shall not propose rates for other classes of tenants but—

Provision for rates in special cases.

- (i) in tracts of unstable and shifting cultivation he may propose modified rates for non-occupancy tenants;
- (ii) he may, and when the greater part of the rent of a village is paid in kind shall, propose rates for the commutation of such rents.

*Cf.* section 59(1) of the Act of 1926.

*Other classes of tenants* refers to classes of tenants other than those mentioned in section 110, other than hereditary (including non-occupancy) and occupancy (including exproprietary tenants, as the measure of rent payable by these depends on the rates in respect of occupancy tenants) tenants.

**112.** (1) The rent-rate officer shall publish in such manner as may be prescribed the proposals and records made by him under section 110 and section 111 and shall receive and consider any objections which may be made to them.

(2) When such objections, if any, have been considered and disposed of according to the prescribed procedure the rent-rate officer shall submit the proposals and records made by him after such modification, if any, as he may think fit to the Board.

(3) On receipt of the proposals and records submitted by the rent-rate officer under sub-section (2), the Board may direct further inquiry into any of the matters contained therein.

(4) The Board shall either sanction the proposed circles, soil classifications, rent-rates and other matters recorded under section 110 and section 111 or may, for reasons to be recorded, sanction them with such modification as they think fit and the rates so sanctioned shall be sanctioned rates.

This section corresponds to and reproduces the effect of section 58 of the Agra Act of 1926 and section 51-E of the Oudh Act.

### *Commutation, Abatement and Enhancement of Rent*

**113.** Where rent has heretofore been paid in kind, or based on an estimate or appraisalment of the standing crop, or on rates varying with the crop sown or partly in one of such ways and partly in another or other of such ways, the landholder or the tenant may sue for the commutation of such rent to a fixed money rent and the court shall decree the suit unless, in a case in which the landholder is the plaintiff, on a plea by the tenant that the cultivated area or the produce of the holding is exceptionally liable to fluctuation by reason of damage by wild animals, flooding, and the like, it considers that commutation is undesirable, in which case it shall dismiss the suit.



This reproduces the effect of section 60 of the Agra Act of 1926, substituting "tenant" for "an occupancy tenant, or an exproprietary tenant or a statutory tenant or the heir of a statutory tenant."

The court has no option but to decree the suit for commutation unless it finds on a plea raised the existence of the reasons indicated in the section.

A suit for commutation of rent is at No. 10 of Group B of Schedule IV. There is no limitation and the court-fee is that indicated by the Court-Fees Act.

**114.** The rent of a tenant, other than a permanent tenure-holder, or a fixed-rate tenant, shall be liable to abatement under this Act on one or more of the following grounds only—

Grounds of abatement of rent.

- (a) that the rent payable by the tenant is substantially greater than the rent calculated at the sanctioned rates appropriate to him ; or
- (b) that the productive powers of the land held by the tenant have been decreased by an improvement made by the landholder or by any cause beyond the tenant's control during the currency of the present rent ; or
- (c) that the area of his holding has been decreased by diluvion or encroachment or by the taking up of land for a public purpose or for a work of public utility ; or
- (d) that the rent is liable to abatement on some ground specified in a lease, agreement or decree under which he holds.

The section corresponds to section 54 of the Act of 1926. Clause (a) is new. Clauses (b) and (c) reproduce clauses (b) and (c) of section 54, clause (d) is taken from section 18 of the Oudh Act.

Permanent tenure-holders and fixed-rate tenants cannot get abatement under the section.

**Clause (a).**—Section 112 provides for sanctioned rates. If the rent exceeds the rent calculated at such rates, a cause for abatement arises.

**Clause (b).**—See note to section 102. The decrease should be due to a cause beyond the tenant's control and during the currency of the present rent.

**Clause (c).**—See notes to section 102.

The two reasons for the decrease in area which would justify abatement of rent should be noted, viz., diluvion and the taking up of land for

a public purpose or a work of public utility. Encroachment by the landholder or partial eviction by him or his refusal to deliver part is not within the clause. In a case of partial ejectment, section 95 may be resorted. In other cases, the Act provides no express relief.

**Clause (d).**—The lease, agreement or decree must specify the causes for which rent might be abated and provide for abatement of rent. If it merely provides for variation of the rent according to the crops, it is not one to abate rent.<sup>1</sup> So an agreement embodied in a *kabuliat* to pay only a certain amount of rent agreed upon between the parties in settlement of differences between them and to avoid future litigation is not one to abate rent.<sup>2</sup>

A *razinama* or *bazdawa* may be an agreement contemplated by the clause.<sup>3</sup>

If there is a custom in a village or mahal whereby a tenant is entitled to a proportionate reduction from the rent of any year for such lands, as, owing to fluvial action, deposit of sands, or non-germination of seeds, were or became unculturable in that year, the custom will probably be deemed embodied in the terms of the lease. Rent for the year was reduced in *Beni Prasad v. Dukhi*.<sup>4</sup> The reduction can in no sense be called abatement of rent, but is a mere variation of it.

It must be borne in mind that abatement means decrease of rent permanently or for an indefinite period, the rent as altered being substituted for the original rent, and continuing to be the rent until varied by agreement or by further order. A suit for abatement cannot therefore be for a particular year or years and to have no effect beyond that, *e. g.*, where the area of a tenant's holding has been temporarily decreased by diluvion, or other causes, the tenant cannot sue for abatement of rent.

Nor can a suit for abatement be under the section at the instance of a permanent tenure-holder, or a fixed rate tenant.

A sub-tenant or a tenant of *sir* has a right to abatement of rent for one of the causes mentioned in clauses (a) to (d), and also on the ground that the rent payable by him exceeds by more than one-third the rent of the holding calculated according to the rates sanctioned for hereditary tenants.

The suit is No. 11 of Group B of the 4th Schedule, and lies in the Court of an Assistant Collector of the first class with a right of appeal to the Commissioner. There is no limitation for it and the court-fee payable is that prescribed by the Court-Fees Act.

**115.** The rent of a fixed-rate tenant shall be liable to abatement only on one of the grounds mentioned in clause (c) of section 114.

Abatement of rent of fixed-rate tenants.

<sup>1</sup> See *Jadobar v. Beharee*, 2 N. W. P. 437.

<sup>2</sup> *Sheo Sahay v. Ram Rachna*, 18 Cal. 333.

<sup>3</sup> See *Ranjit v. Kori*, B. R. 69 of 1883.

<sup>4</sup> 23 All. 270=21 A. W. N. 69.

The section corresponds to section 52 of the Agra Act of 1926.

**Fixed-rate tenant.**—See section 23 for meaning.

The rent of a fixed rate tenant can be abated only for decrease in area and taking up of land for a public purpose etc. as mentioned in clause (c) of section 114.

Under section 52 of the Act of 1926, abatement of rent of such tenants could take place only for a cause mentioned in section 114 (c), i.e., for decrease in area by diluvion or the taking up of land for a public purpose or a work of a public utility.

The suit is provided for at No. 12 of Group B of the 4th Schedule. It lies in the court of an Assistant Collector of the first class with a right of appeal to the Commissioner. The court-fee payable is that prescribed by the Court-Fees Act. There is no limitation for the suit. Under the Agra Act there was no limitation, under the Oudh Act, the limitation was one year from the date of the cause of action, and it was held that when land had been swept away by a river in parts in several years, the cause of action arose every year for the part swept away during the year and not in the year in which the erosion started.<sup>1</sup> This ruling may prove useful in the near future.

**116.** The rent of an under-proprietor, other than an under-proprietor who holds a sub-settlement, and of a permanent lessee, other than a permanent lessee of a whole mahal or patti, shall be liable to abatement only on one of the grounds mentioned in clause (c) of section 114 or on some ground specified in the lease, agreement or decree under which he holds.

Corresponds to part of section 18 of the Oudh Act. The only admissible grounds for abatement in the case of an under-proprietor not holding a sub-settlement are

- (i) decrease in area due to diluvion and taking up of land for a public purpose or a work of public utility ;
- (ii) a ground specified in a lease, agreement or decree under which he holds.

The case of an under-proprietor who holds a sub-settlement is not provided for by this section and the proviso to section 18 of the Oudh Act which related to him has not been re-enacted.

The section embraces a permanent lessee who is not the permanent lessee of a whole mahal or patti, the case of the latter not being provided for.

**117.** The rent of a tenant, other than a permanent tenure-holder or a fixed-rate tenant, shall be liable to enhancement under this Act on one or

<sup>1</sup> *Hunter v. Ram Pal*, XV U. D. 186.

more of the following grounds only :—

- (a) that the rent payable by the tenant is substantially less than the rent calculated at the sanctioned rates appropriate to him; or
- (b) that the productive powers of the land held by the tenant have been increased by fluvial action; or
- (c) that the productive powers of the land held by the tenant have been increased by an improvement effected by or at the expense of the landholder; or
- (d) that the area of the tenant's holding has been increased by alluvion.

This section corresponds to section 53 of the Act of 1926. It does not apply to permanent tenure-holders or fixed-rate tenants. Clause (a) does not reproduce clause (a) of that section but lays down a test of its own viz., that the rent payable is at a rate less than the rent calculated at the rates appropriate to him. Clauses (b) and (c) are based on clause (b) of section 53 of the Act of 1926, clause (d) is clause (c) of section 53 Cf. section 33, section 35-A and section 35-B of the Oudh Act.

**On one or more of the following grounds.**—i.e., that a land-holder may base his claim on any combination of the grounds mentioned in the section but there can be only one enhancement and not double enhancement.<sup>1</sup> The validity of this ruling is doubtful, if it means that the court cannot consider more than one factor only.

The party asserting a cause for enhancement (or abatement) has to prove it.<sup>2</sup>

**Clause (a).**—That the rate is less than what it would be on calculation at rates appropriate to the tenant is the first ground. It takes the place of fair and *equitable rates* in both the Agra and the Oudh Acts

**Clauses (b) and (c).**—Increase in production power of the land is another reason for enhancement, but such increase must be due to fluvial action or to an improvement effected by or at the expense of the landlord during the currency of the present rent. The words *at the expense of the landlord* displace “otherwise than by the agency or at the expense of the tenant” of the earlier Acts and change the angle of vision.

**Clause (d).** Increase in the area of a holding is the third reason for enhancement of rent, provided the increase is due to alluvion or to the tenant's encroachment. See notes to section 102.

The suit is provided for at No. 14 of Group B of the 4th Schedule and lies in the court of an Assistant Collector of the first class with a

<sup>1</sup> *Hanwant Singh v. Birbal*, 11 U D 513

<sup>2</sup> See *Bhoshun Chunder v. Ram Dayal*, 14 W. R. 55.

right of appeal to the Commissioner. There is no limitation for the suit and the court-fee payable is that prescribed by the Court-Fees Act.

In Oudh, it was No. 3 of section 108. It was cognizable by an Assistant Collector of the first class with an appeal to the Commissioner, or could be tried by a Collector when an appeal lay with Commissioner on a point of law only and his decision was final. It had to be brought within one year of the accrual of the cause of action which was annually recurring so long as the tenancy lasted.

**118.** The rent of a fixed-rate tenant shall be liable to enhance-  
Enhancement of rent of fixed-rate tenant. ment only on the ground specified in clause (d) of section 117.

This section reproduces in effect section 51 of the Act of 1926,

See notes to section 102.

The suit is provided for at No 15 of Group B of the 4th Schedule and lies in the Court of the Assistant Collector of the first class with a right of appeal to the Commissioner. There is no limitation. The court-fee payable is that prescribed by the Court-Fees Act.

**119. (1)** The rent of a tenant shall not be enhanced by  
Limits to enhancement of rent. more than one-fourth of his existing rent, subject to the condition that the rent fixed shall in no case be less than three quarters of the rent calculated at the appropriate sanctioned rates.

(2) This section shall not apply to a decree or order of a court for enhancement of rent on account of an increase in area.

(3) In decreeing an enhancement of rent, if the enhancement is not less than one-fourth of the existing rent, and if the court considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant, the court may direct that the enhancement shall take effect by yearly increments extending over any number of years not exceeding three.

Sub-section (1) reproduces in effect section 63 of the Act of 1926, which reproduced section 46 of the Act of 1901. Cf. section 51 A of the Oudh Act.

Sub section (1) fixes the limit of enhancement to one-fourth of the existing rent, provided that the rent fixed is not less than three-fourths of the rent calculated at the appropriate rates. Sub-section (2) is new and shows that the section does not apply to decrees or orders of a revenue court for enhancement on account of an increase in area. In such a case the limit of one-fourth of the existing rent for increase in area will not be observed.

**120.** If a tenant who is sued for enhancement of rent proves  
Tenant's plea in enhancement suit that the whole or any portion of the enhancement decreed is due to an improvement which was made by him within the last

thirty years and which he was entitled to make, the court shall pass a decree only for such enhancement, if any, as it might have decreed if the tenant had made no improvement.

The section is based on the proviso to section 68 of the Act of 1926.

**121.** Subject to the provisions of sub-section (4) of section 126 every decree, compromise or registered agreement for the determination, abatement, enhancement or commutation of rent shall take effect from the commencement of the agricultural year next following that in which the suit was instituted or the agreement was registered unless in the case of a decree the court for reasons to be recorded directs, or unless in the case of compromise or a registered agreement the compromise or agreement provides that it shall take effect from some later date.

Decree or agreement  
in suits for determi-  
nation, etc., of rent  
when to take effect.

Reproduces in effect section 66 (2) of the Act of 1926, and fixes the time from which a decree, registered agreement or compromise *re* the amount of rent payable thereunder is to take effect.

**122.** (1) A suit for commutation, abatement, or enhancement of rent may be instituted against or by any number of ex-proprietary, occupancy, hereditary or non-occupancy tenants collectively :

Joinder of parties in  
suit relating to varia-  
tion of rent.

Provided that all such tenants are tenants of the same landholder and all the holdings in respect of which the suit is instituted are situated in the same mahal and village.

(2) No decree shall be passed in any such suit affecting the interest of any person, unless the court is satisfied that he has had an opportunity of being heard.

(3) The decree shall specify the extent to which each of the holdings is affected thereby.

1. The section reproduces section 62 of the Act of 1926 which reproduced section 45 of the Act of 1901.

2. Sub-section (3) should be specially noticed. It is obligatory that the decree should specify the extent to which each of the holdings is affected. It may be mentioned that in an undivided mahal or share, all the co-sharers should, in the absence of a custom to the contrary, sue for enhancement,<sup>1</sup> and presumably all must be sued. One of them cannot sue or be used alone,<sup>2</sup> but if other co sharers refuse to join,

<sup>1</sup> Section 246.

<sup>2</sup> *Suraj Koor v. Heitoo*, 1 N. W. P. 224 ; *Bhekoo v. Umar*, 1 N. W. P. 236 ; *Ram Pershad v. Mohammad Husain*, 2 Agra 249.

they may be arrayed as defendants.<sup>1</sup> Where a tenure was held under a zamindari which originally formed one entire estate and the zamindari was partitioned into several separate estates and the rent was allotted proportionately to each of the estates so formed, though the tenure remained undivided, it was held that the owner of one of the estates could sue for enhancement without joining the others.<sup>2</sup>

### *Relief in agricultural calamities*

**123. (1)** On the occurrence of an agricultural calamity affecting the crops of any mahal or portion of a mahal the Provincial Government or any authority empowered by it in this behalf may, in accordance with the provisions of the Sixth Schedule remit or suspend for any period the whole or any portion of the rent of any holding affected by such calamity whether such holding is held mediately or immediately from the landlord.

**(2)** When the Provincial Government or any authority empowered by it in this behalf, remits or suspends rent under the provisions of sub-section (1) it shall in accordance with the provisions of the Sixth Schedule remit or suspend for a like period the whole or a portion of the revenue assessed on such mahal.

1. The section takes the place of sections 72, 73 of the Act of 1926

The thing that brings the section into operation is the occurrence of an agricultural calamity affecting the crops of a mahal or part thereof, *e. g.*, alluvion, diluvion, drought, hail, deposit of sand etc.

Revision or suspension must be in accordance with the provisions of the Sixth Schedule, *q. v*

2. When the Governor or some authority empowered by him so remits or suspends rent, he is bound in accordance with Schedule VI to remit or suspend, wholly or in part, the revenue assessed on such mahal.

The section deprives of any force the ruling in *Muhammad Abdul Qaiyum v. Secy. of State*.<sup>3</sup> To counteract the effect of this ruling the legislature had passed the U. P. Regularization of Remissions Act No. XIV of 1938. But the High Court has recently held the Act to be *ultra vires*.<sup>4</sup>

The parties cannot contract themselves out of the benefit of the section, *e. g.*, by a stipulation in a lease that the benefit of this section will be ignored.<sup>5</sup>

<sup>1</sup> S. 246. This overrides *Mahomed Said-ud-din v. Mahomed Husain*, 2 N. W. P. 438.

<sup>2</sup> *Hem Chandra v. Bahaduri*, 26 Cal. 832.

<sup>3</sup> 1938 All. 114=1937 A. L. J. 1396=1938 A. I. R. All. 158=1938 R. D. 274.

<sup>4</sup> *Atiga Begum v. Abdul Mughni Khan*, 1940 A. L. J. 274 (F. B.)

<sup>5</sup> *Mudan Mohan v. Ram Chandra*, XVI U. D. 329=1935 R. D. 376, A. I. R. All. 619.

**124.** (1) An order passed under section 123 shall not be questioned in any civil or revenue court.  
 Finality of order under the preceding section.

(2) No suit or application shall lie for the recovery of any sum the payment of which has been remitted under the provisions of section 123 or, during the period of suspension, of any sum the payment of which has been suspended under the provisions of that section.

1. Sub-section (1) corresponds to and reproduces in effect section 74 (1) of the Act of 1926, and section 19-A of the Oudh Act, which was held not to apply to thekadar.<sup>1</sup>

2. Section 4 does not apply to a thekadar, and therefore it is open to a zamindar to grant a theka which contains a provision contrary to the provisions of the Act, *e. g.*, that rent would be payable irrespective of whether any remission or suspension of rent is made by the Governor under section 123 on account of calamity.<sup>2</sup>

**125.** When the payment of any sum has been suspended in accordance with the provisions of section 123, the period during which the suspension continues shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of such sum.  
 Period of suspension to be excluded in computing period of limitation.

The section reproduces in effect section 75 of the Act of 1926.

#### *Extraordinary and emergency provision*

**126.** (1) Notwithstanding anything in this Act or in any other enactment for the time being in force when the Provincial Government is satisfied that owing to some extraordinary cause there has been a sudden and substantial rise in the price of agricultural produce or that an emergency has arisen within any specified area or areas, it may with the previous approval of both Chambers of Legislature, by notification in the official *Gazette*, appoint to such area or areas an officer having powers not less than those of an assistant collector of the first class and invest him with all or any of the following powers—

(a) the powers of a rent-rate officer under this Act;

(b) power to fix, commute, abate or enhance rents in accordance with the sanctioned rent-rates;

<sup>1</sup> *Zamin Ali Khan v. Sankatta*, 1936 A. I. R. Oudh 83=1935 O. W. N. 1128=1935 R. D. 487=158 I. C. 714.

<sup>2</sup> *Makhan Lal v. Muh. Tanassul Hussain*, 58 All. 998=1936 A. L. J. 828=1936 A. I. R. All. 628=1936 R. D. 315=XVII U. D. (H. O.) 157.



(c) power in an emergency to abate rents summarily otherwise than in accordance with such rent-rates.

(2) An officer invested with powers under this section may be invested with them generally or with reference to specified cases or classes of cases and shall have all the powers of a record officer under Chapter IV of the United Provinces Land Revenue Act, III of 1901.

(3) Nothing in this section shall apply to the rents payable by permanent tenure-holders or fixed-rate tenants.

(4) Every order settling or commuting rent under this section shall take effect from such date not preceding the beginning of the agricultural year next following the year in which the order was passed as the officer passing it may direct.

(5) The Provincial Government shall invest the officer appointed under this section with the powers of a settlement officer under Chapter V of the United Provinces Land Revenue Act, 1901, for the purpose of revising the revenue assessed on any mahal in which rents have been settled or commuted under this section.

(6) If as a result of the proceedings of the officer appointed under this section the assets of a mahal, calculated in accordance with the provisions of the United Provinces Land Revenue Act III of 1901, are increased or decreased such officer shall increase or decrease as the case may be, the land revenue of such mahal in the proportion which such increased or decreased assets bear to the assets before such increase or decrease was made.

(7) An appeal against an order of the officer appointed under this section fixing, abating, enhancing or commuting rent shall lie to the commissioner.

(8) Except as provided in sub-section (7) no order under this section shall be questioned in any civil or revenue court.

1. This section is new in effect. Section 57 of the Agra Act and section 51 of the Oudh Act provided for the appointment of roster officers.

The power of the Provincial Government to act under the section arises on an emergency only, of which presumably they are the sole judges. An officer is to be appointed with the approval of both Houses of the legislature.

2. The officer to be appointed will be styled a rent-rate officer (instead of a roster officer), and he may be invested with such of the powers mentioned in clauses (a) to (c) as the Government directed in the notification appointing him. The investment of powers may be general or with reference to specified cases or classes of cases. The officer will have all the powers of a record officer under the Land Revenue Act.

3. Sub-section (3) must be noted.

Sub-section (4) fixes the date for the operation of an order passed by a rent-rate officer as to settling or commuting of rent.

Sub-section (5) enjoins the Government to invest a rent-rate officer with the powers of a settlement officer for the purpose of revising the revenue assessed on any mahal in which rents have been settled or commuted under the section.

Sub-section (6).—Empowers reduction of land revenue on reduction of the assets of a mahal as the result of action under this section.

Sub-section (7).—Gives a right of appeal with the commissioner.

Sub-section (8).—The only way to challenge an order under the section is an appeal provided for by sub-section (7). Otherwise the order is not open to attack in a Civil or Revenue Court.

## CHAPTER VII

### PAYMENT AND RECOVERY OF RENT.

#### *General*

127. In this Chapter “tenant” includes an under-proprietor

Application of the  
Chapter to under-proprietors, etc

Section 127 is new. A permanent tenure-holder is not mentioned in the inclusion Will he be deemed to be a tenant for the purposes of this chapter?

128. (1) The produce of every holding in the cultivation of a tenant and the fruit of every tree which stands on such holding and which is the property of such tenant shall be deemed to be hypothecated for the rent payable in respect of such holding by such tenant and by every person, other than a thekadar intermediate between such tenant and the landlord; and, until the demand for such rent has been satisfied no other claim on such produce or fruit shall be enforced by sale in execution of a decree of a civil or revenue court, or otherwise.

(2) Nothing in this section shall be deemed to affect the provisions of sections 2 to 4 of the Bengal Indigo Contracts Regulation, VI of 1823, or of section 11 of the Opium Act XIII of 1857, or of section 141 of the United Provinces Land Revenue Act III of 1901.

1. This section reproduces sub-sections (1) and (3) of section 152 of the Act of 1926, and corresponds closely to sub-sections (1) and (3) of section 72 of the Oudh Act. Section 152 of the Act of 1926 reproduced section 119 of the Act of 1901 with some additions and verbal alterations. Section 119 of the Act of 1901 corresponded to

section 56 of the Acts of 1873 and 1881 and to section 112 of the Act of 1859.

2. **Holding**, see section 3(7) ; **tenant**, see section 3(23) and section 127 ; **landlord**, see section 3(12) ; **thekadar** see section 3(24) ; **rent**, see section 3 (18) for meaning

A thekadar is not a tenant for the purposes of this section (*Vide* section 219) and the produce of a holding is not deemed to be hypothecated by a thekadar of the proprietary interest ; so that he has no preferential right as against the creditors of the tenant as regards the sale in execution of a decree.

3. The crops are deemed to be hypothecated by the tenant and by very person who intervenes between him and the proprietor. Crops of a tenant's mortgagee in possession are included.

4. **Produce of holding**.—This means that produce which can be gathered and stored, crops of the nature of cereals, grass, or fruit crops. It does not apply to the trees from which the crops, if fruit crops, are gathered.<sup>1</sup>

**And the property of such tenant**.—Though there is hypothecation of other property of the tenant, this will not postpone the execution of a decree by sale of it.

**Rent payable in respect of such holding, etc.**—The charge or lien arises not only where there is rent in *arrear* due from the cultivator to his landlord, but also where rent is *accruing due* in respect of the period during which the produce is being grown. Hence, where any one except the landlord wishes to bring to sale the produce of a cultivator, he must, in order to avoid the prohibition contained in this section tender the amount of the rent or instalment that would next fall due.<sup>2</sup> Where the cultivator is the tenant-in-chief of the land, tender should be made to the proprietor or to the underproprietor or permanent tenure-holder, and the amount tendered will be that due by the cultivator. But if the underproprietor or permanent tenure-holder is also in arrears, the tender should be made to the proprietor of the amount due to him from the underproprietor or permanent lessee, and the balance if any, of the amount due from the cultivator to such person, should be tendered to him. Where the cultivator is a sub-tenant, a tender should be made to the person entitled to receive the rent from the tenant-in-chief of an amount due and to be due by him ; and the balance, if any, after deducting this from the liability of the cultivator to his immediate landlord, should be tendered to the latter.<sup>3</sup> The landlord of an insolvent tenant is a secured creditor to the extent of the rent due in respect of the holding.<sup>4</sup>

<sup>1</sup> *Sheo Prasad v. Moleema*, 1 N. W. P. 108 ; *Bachai Lal v. Tika*, 4 A. W. N. 135 ; *Khaman Singh v. Bala Baksh*, 4 A. W. N. 152 ; *Shankar Sahai v. Din Dayal*, 10 A. W. N. 145.

<sup>2</sup> See *Jagan Nath v. Bhika Ram*, 15 All. 152.

<sup>3</sup> The different rules laid down in *Jagan Nath v. Bhika Ram*, (15 All. 152) must be taken to be modified.

<sup>4</sup> *Bishambhar Nath v. Sukha*, VI U. D. (H. O.) 268=5 L. R. Rev. (Oudh) 98=27 O. C. 99=81 I. C. 47.

5. **No other claim, etc**—A person who has knowledge of the lien should have nothing to do with the crop so long as the lien subsists. He should neither purchase it nor have it sold in execution of a decree. If he does so, he exposes himself to a suit for damages at the instance of a person entitled to the rent.<sup>1</sup> In some cases, the lien was held to attach in the hands of an auction purchaser of standing crops.<sup>2</sup>

The section does not prevent an attachment of a crop in execution of a Civil Court decree. An attaching creditor is in the position of a puisne incumbrancer. He may pay up the landholder or wait and take whatever remains after satisfying the rent claim.

6. **Sections 2, 3 and 4 of Reg VI of 1823**—That Regulation refers to indigo cultivators. Those sections are :—

2. If any person shall have given advances to a raiyat, or other cultivator of the soil, under a written engagement, stipulating for the cultivation of indigo plant on a portion of land, of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests, and for the due execution of the condition of the contract.

3. *First*.—If any person, who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual under engagement with him is evading or is about to evade the execution of his contract by making away with and disposing of the produce otherwise than as stipulated, or that he was engaged, secretly or openly, to supply the same to another, it shall be competent to such person to present a petition of complaint to the Zila Judge within whose local jurisdiction the land stipulated to be cultivated with the indigo plant may be situated, filing with the same the original deed of engagement by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition that such deed was voluntarily and *bona fide* executed by the individual complained against.

*Second*.—On such petition and original deed of engagement being filed, a summons, or *talat chithi*, shall be immediately issued through the *Nazir* in the usual form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorised agent, within such specified period as may in each case appear reasonable, and which period shall in no case exceed twenty days.

*Third*—The officer entrusted with the execution of the process shall also be instructed to affix a copy of the summons in the village *Kachahari* or other place of public resort, and to erect a bamboo on the specified

<sup>1</sup> *Shere Singh v. Karimal*, 2 A. W. N. 51; *Shibbu v. Hulass*, 5 All. 518—3 A. W. N. 114.

<sup>2</sup> *Inam-un-nissa v. Liakat*, 3 All. 424—1 A. W. N. 1; *Kinlock v. Collector of Etawah*, 3 All. 433; *Achul v. Ganga Prasad*, 2 Agra, 73.

parcel of ground on account of which the claim may have been preferred, and which it shall be the duty of the plaintiff or his agent to point out.

By these means sufficient notice of the claim will be given to enable persons desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land to appear either in person or by an authorised agent before the Court for that purpose, and the failure so to attend before the summary decision be passed will be held to bar the claim of any third party founded on any contract for the produce of the land in question, unless it is established by a regular suit.

*Fourth.*—If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed; and if the defendant shall not appear to answer to the complaint within the period specified in the summons, and no other claim be preferred in bar to that of the plaintiff, the Judge or other officer shall, after taking the evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim in the same manner as if the defendant had personally appeared.

*Fifth.*—If the defendant or his authorised agent should attend within the period specified, and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken; and if the voluntary execution be established to the satisfaction of the Court or other tribunal trying the case, and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crop according to the terms of the agreement.

The same principle shall be applied if the agreement be admitted and no satisfactory reason be shown why the defendant should not be held to the performance of his contract.

*Sixth.*—If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded or that the plaintiff had no sufficient cause to warrant his application to the Court, the complaint shall be dismissed, and the plaintiff shall be liable to the payment of costs and such reasonable sum in addition as may seem to the Judge or other officer trying the case a proper compensation to the defendant for any trouble and annoyance to which he may have been subjected.

*Seventh.*—If it should appear in the course of the inquiry that the defendant is under an engagement for the same land to a third party, notice shall immediately be issued for that party to appear and plead either in person or by vakil; and if the person or any third party shall previously to the decision of the case come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge or other officer trying the case shall, after such summary investigation as may be necessary, determine whether

either of the parties has any just claim to the produce of the land, and, if so which of them may have the prior and better claim; a preference will, of course, be given to an engagement duly registered.

The result of such investigation shall be recorded, and a decree passed adjudging the question of right between the parties.

*Eighth.*—No defendant who may attend under the process described in the section shall be confined in jail, or in any manner detained, longer than may suffice to take his answer to the claim, and to obtain from him such further explanations as the nature of the answer may suggest.

*Ninth.*—If pending the enquiry in the manner above directed, it shall appear that the plant on the ground is in a state fit to cut, and will be injured or destroyed if not cut, it shall in such case be competent to the Judge or other officer trying the case to pass an order for the delivery of the plant to either of the parties, provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favour of the latter) a specific pecuniary compensation;

the amount of such compensation shall be fixed by the Judge or other person trying the case in communication with the parties and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manufactured; and the amount when so fixed shall be carefully recorded on the proceedings.

4. *First.*—Any person, in whose favour a summary award shall have been passed for the produce of any defined spots of land, shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to stipulations of his agreement;

and in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest Police Darogha, and to claim from him the assistance of the Police in preventing such removal;

it shall, moreover, be the duty of the Police-officers and of all other officers, on such a decree being exhibited, to aid the persons in whose favour it may have been passed to the utmost of their power.

*Second.*—In order that the foregoing rules may not operate to the prejudice of the landholders, who, by the existing Regulation are authorised to attach the crops for the realisation of rent, justly due to them, it is hereby provided that whenever any manufacturer, who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible conjointly with the raiyat, for any arrear of rent which may have been due, on account of the specific parcel of ground from which the indigo plant may have been taken.

7. **Act XIII of 1857, section 11.**—All opium, the produce of land cultivated with poppy on account of Government shall be delivered by the cultivators to the Sub-Deputy Opium Agents or other district officers, or shall be brought by them to Sadr factory, as the Agent may direct.

And no such opium shall be liable to be distrained or attached by a zamindar or other proprietor, or a farmer of land, for the recovery of arrears of rent, or by any other creditor of a cultivator under any order or decree of Court, but the sum due to the cultivator on account of such opium may be attached by order of Court in the hands of the Agent or of the district officer under the rules in force for such attachments.

8. **Section 141, Land Revenue Act.**—Declares a first charge for the revenue assessed on a mahal on the entire mahal, and on the rents, profits and produce thereof, and prohibits such rents, profits or produce from being applied in satisfaction of a decree or order of any Civil Court until all arrears of revenue due in respect of the mahal have been paid.

129. Any payment made by a tenant from whom rent is due to the landholder to whom it is due shall, in the absence of evidence of a contrary intention on the part of the tenant, be deemed to be a payment on account of rent.

This reproduces section 135 of the Act of 1926.

*Tenant*, see section 3 (23), and section 127 ; *rent*, see section 3 (18) for meaning.

A *thekadar* is a tenant for the purposes of this section, (*Vide* section 219) and the presumption as to payments applies to payments made by him.

*In the absence of evidence, etc.*—*e. g.*, by a proper receipt given by the landholder and accepted by the tenant.

*Be deemed etc.*—In the absence of contrary evidence, a payment made by a tenant will be taken to be a payment on account of rent.

130. (1) A payment made by a tenant to his landholder, whether in satisfaction of a decree or otherwise, shall not be applied to the discharge of an arrear the recovery of which is barred by the law in force for the time being as to the limitation of suits and applications.

(2) Subject to sub-section (1), when a tenant makes payment on account of rent to his landholder with express intimation that he wishes the payments to be credited to any year, instalment, or holding, the payment, if accepted, shall be credited accordingly, and if the tenant makes no such intimation the landholder shall credit the payment to an earlier arrear in preference to a later arrear and, where more than one arrear is of the same date, to a smaller arrear in preference to a larger arrear.

(3) Where the tenant makes a payment in respect of a decree passed under the provisions of sub-section (2) of section 150 without intimating that the payment should be credited to the amount

due in respect of any particular holding the payment shall be appropriated in such manner as to save as many holdings as possible for the tenant.

1. The section corresponds to section 134 of the Act of 1926, which corresponded to section 109 of the Act of 1901, and was based on section 55, Bengal Tenancy Act. *Cf.* sections 59 to 61, Contract Act. Sub-sections (1) and (2) apply to *thekadars*, but not sub-section (3). (*Vide* section 219).

Sub-section (2) also corresponds to section 13-B of the Oudh Act.

**Rent.**—See section 3 (18), **Landholder**—See section 3 (11), **Tenant.**—See section (23), for meaning.

2. **Sub-section (1).**—No payment is to be applied in discharge of a time-barred arrear of rent. Even if made in satisfaction of a decree, it cannot be appropriated to an arrear covered by the decree, if its execution would be barred by limitation. It is also possible to read the section so that though an arrear be covered by a decree a payment in satisfaction of such decree must be made before its recovery would be time-barred if the suit had not been filed and decree passed. This view is not to be recommended.

3. **Sub-section (2).** **Subject to sub-section (1).**—*i. e.*, even a tenant cannot appropriate a payment made by him towards a time-barred arrear of rent; the phraseology is likely to produce trouble where a decree has been passed for arrears of rent, the recovery of which would be barred if a suit ending in the decree had not been brought.

In other respects, the tenant is at liberty and has the first right to appropriate a payment made by him to his landholder to any year, instalment or holding, and the landholder cannot say nay to such appropriation.

4. **Year and instalment credited**—On failure of the payer to appropriate the landholder may credit it to any arrear, as indicated in the section. Where neither expressly appropriates, the presumption in section 134(2) may be raised, provided the landholder could have, at the time of payment, inserted the particulars in clauses (e) and (f) of section 134. If omission to appropriate was due to inability arising from ignorance or other cause, the question whether the landholder subsequently credited the payment to any particular arrear is one of fact. Payment in each year must be presumed to be for the current year and surplus payments to be for past and not subsequent years.<sup>1</sup> If a tenant shows payment for one or two particular years it is to be presumed that all previous claims have been satisfied; and if the landholder credits any such payment to previous years, he must show the existence of arrears for those years.<sup>2</sup>

It is open to a court which has to deal with the facts of a case to say whether receipts, which extend over a number of years together and

<sup>1</sup> *Tara Moons v. Kally Churn*, W. R. (1864) Act X, 141.

<sup>2</sup> *Soorush Soonderes v. Brode*, 1 W. R. 274.



which do not specify the years to which the amounts relate, refer partly to the year of payment and partly to the arrears of previous years.<sup>1</sup>

Rent does not mean interest and money paid as rent cannot be credited towards interest due.<sup>2</sup>

An entry of payment in a pocket-book admitted by the landholder does not amount to a receipt within section 132, and does not raise a presumption that the payment was in full discharge of all dues up to the date of the entry.<sup>3</sup>

5. **Particulars.**—Clauses (e) and (f) of section 134 must be read subject to section 130. That is, where a tenant has not appropriated a payment, the landholder may do so.

Section 146 defines an arrear of rent, and proceeds to enact that interest is payable on such arrear—thus keeping the two separate. It has been held under the Bengal Tenancy Act, section 55, that rent does not necessarily include interest.<sup>4</sup> Hence if A pays a sum of money to B as rent without specifying the year, or specifying a year for which arrear is due, the landholder can appropriate it only towards the arrear of a year for which rent is due and not towards the interest on any arrear.<sup>5</sup>

6. **Sub-section (3).**—Section 150(2) enacts that in a suit for arrears of rent due in respect of several holdings, the court shall specify separately the amount, if any, found due in respect of the several holdings. The sub-section is meant to save as many holdings as possible for the tenant, and hence if a tenant has not appropriated a payment made by him in respect of a decree passed under section 150(2), i. e., has not intimated as to which of the several holdings the payment is to be appropriated to, the court should so appropriate it towards the arrears of the several holdings as to save as many holdings for the tenant as possible.

Where the decree under section 150 does not specify the amount due in respect of each holding, and the tenant is deprived of the benefit of this sub-section, the executing court was held to possess inherent powers to rectify the decree.<sup>6</sup>

131. A payment of a money rent may be made by the tenant to the landholder either direct, or by postal money-order or by deposit in accordance with the provisions of section 137 :

Provided that the acceptance by a landholder of a sum paid by postal money-order or by deposit in court shall not by itself

<sup>1</sup> *Suraj Kanta v. Banerjee*, 24 Cal. 151.

<sup>2</sup> *Bhagabati Debya v. Basanta Kumari*, 11 C. W. N. 110.

<sup>3</sup> *Gulab Singh v. Debi Prasad*, 8 A. L. J. 505—10 I. C. 1002.

<sup>4</sup> *Rai Charan v. Kumud Mohan*, 25 Cal. 571 ; *Koylash Chandra v. Tarak Nath*, 25 Cal. 571 note ; *Bhagabati Debya v. Basanta Kumari*, 11 C. W. N. 110—5 C. L. J. 69.

<sup>5</sup> *Bhagabati Debya v. Basanta Kumari*, 11 C. W. N. 110.

<sup>6</sup> *Santoo v. Rash Behari Lal*, XX U. D. 345—1939 R. D. 393.

or by virtue of anything written on the money-order coupon be deemed to constitute an admission by him as to the amount of rent payable or due on account of any particular year, instalment or holding, or an admission of the payer as a tenant.

1. The section without the proviso corresponds to section 130 of the Act of 1926, which reproduced section 100 of the Act of 1901.

2. **To whom payable.**—Rent must be paid to the person entitled to collect or to his agent and to no other. In an ordinary undivided zamindari village, the lambardar is in the absence of a contract or custom, the person authorised to realise rents. Where a tenant paid rent to a co-sharer, he could not plead that payment in answer to a suit by the lambardar for arrear of rent.<sup>1</sup> Conversely, a co-sharer cannot sue to recover rent which has been paid to the lambardar, though not in his capacity as such.<sup>2</sup> But if a co-sharer has by agreement between the proprietors, or otherwise, been declared the owner of a recognised share, a tenant, who has agreed to pay rent according to the shares of the respective part owners, cannot object to pay the share of such co-sharer.<sup>3</sup> A co-sharer who claims to collect the portion of rent corresponding to his share only must prove that he is entitled to sue for a fractional share.<sup>4</sup>

Where in a suit for arrears of rent brought by a newly appointed lambardar the tenant pleads payment to a co-sharer, he must prove that in the past he has been paying rent to that co-sharer and not to the lambardar. Collection by a co-sharer during a period when there was no lambardar is not payment by a tenant in good faith.<sup>5</sup>

Where *A* grants a lease to *B*, *A* is the person entitled to receive rent. *B* cannot challenge *A*'s right except by showing that, subsequent to the tenancy, *A*'s rights have been lost in his favour or in favour of someone else. If after such a lease, *B* attorns to *C* by payment of rent to him or otherwise, he can show that he did so under a mistake and that *C* has no title to the rent.<sup>6</sup> Where one of several joint tenants of a holding sublets it, he or his assignee alone may sue for arrears.<sup>7</sup>

3. **Set-off.**—List II of the Second Schedule, serial No. 10, of the Act of 1926 has been omitted, and the restriction against claiming a set-off no longer exists. It showed that the only set-off allowable was an unsatisfied decree under the Act.

4. **The proviso.**—is new and should be noted. It is meant to protect landholders from the palpable legal effects of the receipt of money by post or withdrawal of a deposit made in court.

<sup>1</sup> *Ganga Sahai v. Ganga Baksh*, 10 A. W. N. 3, *Ishri v. Baij Nath*, XVI U. D. 201.

<sup>2</sup> *Chatrri v. Bahadur*, 8 A. W. N. 45.

<sup>3</sup> *Lontfulhuq v. Gopi Chunder*, 5 Cal. 941.

<sup>4</sup> *Lalun v. Hemraj*, 20 W. R. 76.

<sup>5</sup> *Chuni Singh v. Asa Ram*, XV U. D. 218—15 L. R. Rev. 293.

<sup>6</sup> *Lal Mohamed v. Kallan Das*, 11 Cal. 159.

<sup>7</sup> *Ram Prasad v. Basdeo Sahai*, 9 L. R. Rev. 300—IX U. D. 145—12 R. D. 676.

**132.** Where rent is sent by postal money-order, in the case of acceptance, the payee's receipt and in the case of refusal the endorsement of such refusal, on the money-order duly stamped by the post office shall be admissible in evidence without formal proof and shall until the contrary is proved be presumed to be a correct record of such acceptance or refusal.

The section is new and lays down a useful rule of evidence. The payee's receipt of a money order or his endorsement of refusal must be duly stamped by the post office to have the probative value assigned by the section.

**133.** (1) Every tenant, lessee or licensee who makes a direct payment on account of rent or sayar shall be entitled to obtain forthwith from the landholder a written receipt for the amount so paid, signed by the landholder or his duly authorized agent.

(2) The landholder shall from a book printed under the provisions of section 136 give a separate receipt for each sum paid on account of rent or sayar and shall prepare and retain a counterfoil of each receipt given by him.

(3) If in any suit or proceeding between a landholder and a tenant in which the payment of rent is in issue the landholder does not produce or, when ordered by the court to produce, fails to produce, such receipt book the court may make any presumption against the landholder which it considers reasonable.

Sub-section (1) reproduces section 140 of the Act of 1926, adding the words "lessee or licensee" after "tenant" and "or sayar" after "rent" and corresponds to section 13 of the Oudh Act. Section 140 of the Act of 1926 reproduced section 107 of the Act of 1901.

The receipt should be signed by the landholder or his duly authorised agent.

Sub-section (2) is new and lays a new obligation on landholders to keep a printed receipt book as prescribed by the Act and to give receipts from such book.

Sub-section (3) is new. It enables the court to raise a reasonable presumption against a landholder who does not produce or fails to produce when ordered by the court the counterfoil or copy of a receipt. Cf. section 114 of the Evidence Act.

Particulars of valid receipt.

**134.** (1) The receipt and counterfoil shall specify the following particulars, namely :—

- (a) the names of the payer and the payee ;
- (b) the name of the village with mahal and *patti* ;
- (c) the amount paid ;

- (d) whether the payment is on account of rent or sayar ;
- (e) where there is more than one holding, an indication of the holding towards the rent of which the payment has been credited ;
- (f) the year and instalment to which the payment has been credited ;
- (g) whether the payment has been accepted as payment in full, or only on account ; and
- (h) the date on which the payment is made.

(2) If a receipt does not contain substantially the particulars required by this section, or if a joint receipt for rent and sayar has been given in contravention of sub-section (2) of section 133 it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent and for sayar up to the date on which the receipt was given.

1. Sub-section (1) reproduces with the addition of clause (d), sub-section (1) of section 141 of the Act of 1926, and section 13A of the Oudh Act. Sub-section (2) with the addition of "or if a joint receipt... section 133" and "and for sayar" reproduces section 141 (2).

Section 141 of the Act of 1926 corresponded to section 108 of the Act of 1901, and the third paragraph of section 48 of the Act of 1881 and to section 56 (3) and (4) of the Bengal Tenancy Act.

2. Section 133 (2) imposes the necessity of granting a separate receipt for payment of sayar, section 134 (2) enacts that a joint receipt for rent and sayar payments will raise a presumption, until the contrary is shown, that the receipt is an acquittance in full of all demands for rent and for sayar up to the date on which the receipt was given.

In a case of several joint landholders, all or their authorised agent or agents should sign the receipt. If signed by one or some only, the presumption in sub section (2) might not be raised unless the court finds that the person who signed was authorised by all of them to grant the receipt.<sup>1</sup>

If the form in which receipts are prepared are purposely ambiguous, the court may draw an inference in favour of the person who has been in possession for eleven years.<sup>2</sup>

**135.** The tenant shall in accordance with rules made by the Board be entitled, on paying a fee of four annas to the landholder, to receive from him, within three months after the end of an agricultural year a statement of account of rent and sayar, specifying such particulars as may from time to time be prescribed by the Board either generally or for any particular local area or class of cases.

Right of tenant to statement of account.

<sup>1</sup> *Gopi Nath v. Uma Kant*, 24 Cal. 169.

<sup>2</sup> *Kamla Datta v. Dattu*, XX U. D. 331=1939 R. D. 123.

This section is new and confers on tenants a right to have a statement of account from their landholders on payment of a small fee. It seems to be based on section 57, Bihar Tenancy Act.

**136.** The Provincial Government shall cause to be printed and kept for sale to landholders at all tahsils books of receipts with counterfoils in the form prescribed by Schedule V, at a rate not exceeding two annas for a book of hundred receipts.

This section is new.

**137. (1)** A tenant may make an application for permission to deposit in the court of the tahsildar an instalment or instalments or the unpaid balance of an instalment or instalments of rent in arrears on the date of such application and if such application complies substantially with the provisions of sub-section (2) the tahsildar shall receive such deposit and grant a receipt therefor, which shall operate as an acquittance for the amount deposited as if such amount had been received by the person entitled to receive it.

(2) Such application shall specify the name of the person to whom the amount deposited is due as arrears of rent, or where several persons are entitled to receive such amount, either jointly or severally, the name of each of such persons, or where the tenant entertains a *bona fide* doubt as to who is entitled to receive such amount the name of the person to whom rent was last paid and of the person now claiming it.

1. The section corresponds to sections 144, 145, 146, 147 of the Act of 1926 and to sections 14 to 16 of the Oudh Act.

2. The application is No. 2 of Group C of the Fourth Schedule. The court-fee payable is one rupee if the amount deposited exceeds Rs. 100, eight annas if it exceeds Rs. 50 and does not exceed Rs. 100, and four annas if it does not exceed Rs. 50. There is no limitation for it. It lies in the Court of a Tahsildar except when an underproprietor or tenant is sued for a portion of the rent of a holding under section 246(3) in which event the application is to be made to the court before which the suit is pending. (*Vide* section 139).

**Deposit.**—Where a tenant has been in the habit of depositing rent due to a landholder in his sole name he is not justified without notice or order to deposit it in the joint names of that landholder and another.<sup>1</sup> A deposit can be made only after the rent becomes due and not before.<sup>2</sup> It may be made by the tenant or a transferee on his behalf.<sup>3</sup> Where a

<sup>1</sup> *Rainey v Nobocomar*, 24 W. R. 128.

<sup>2</sup> *Tamoonee v. Jesbun*, 6 W. R., Act X, 98.

<sup>3</sup> *Bihari Lal v. Basarat*, 25 Cal. 289.

tender is refused, the tenant is not bound to make a deposit, and omission to have recourse to the provisions of this section will not destroy or minimise the legal effects of the tender.<sup>1</sup> For instance, the landholder loses his right to interest from the date of the tender, and may have to pay the costs of the tenant.<sup>2</sup>

**3. Shall receive and give receipt.**—If the petition satisfies subsection (2) the Court is bound to receive the rent and give a receipt. It cannot enter into a judicial enquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit, nor can it return the money to the tenant upon an application by the landholder.<sup>3</sup>

**138. (1)** If the tahsildar receives the deposit, he shall cause a notice of the receipt of such deposit to be served free of charge on the person or persons specified in the application and on any other person who he has reason to believe is entitled to such deposit.

Disposal of deposit by tahsildar.

(2) The tahsildar may pay the amount of the deposit to any person appearing to him to be entitled to the same or may, if in his opinion there is any doubt as to the person to whom the deposit should be paid, retain such amount until such doubt is removed by order of court of competent jurisdiction.

(3) The payment may, if the tahsildar so directs, be made by postal money order.

(4) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a civil or revenue court to the contrary, be repaid to the depositor on his application and on his returning the receipt given by the tahsildar under the provisions of section 137, or on his producing such other evidence of his having made the deposit as the court may consider sufficient.

This section corresponds to sections 148, 149 and 150 of the Act of 1926.

An application under subsection (4) for payment or refund of rent deposited is at No 3 of Group C, Schedule IV, and is not subject to any limitation. The court fee is regulated by the Court-Fees Act.

**139.** A tenant who is sued for a portion of the rent of a holding under the provisions of sub-section (3) of section 246 may deposit the whole of the rent of such holding in the court

Deposit of rent in court during pendency of suit.

<sup>1</sup> *Bissonath v. Hurro Pershad*, 2 W. R. Act X 88.

<sup>2</sup> *Boylechand v. Moulard*, 4 Cal. 572.

<sup>3</sup> *Sridhar v. Rameshwar*, 15 Cal. 168.

before which the suit is pending and such deposit shall, subject to any orders passed in appeal, be disposed of in accordance with the orders of such court.

This section corresponds to section 144 of the Act of 1926.

**Section 246(3)**—Provides for a suit by a co-sharer for his share, when the remaining co-sharers refuse to join as plaintiffs in a suit for money recoverable by them jointly.

**140.** No suit or other proceeding shall be instituted against the Crown or against any servant of the Crown in respect of anything done regarding a deposit under the provisions of the foregoing sections of this Chapter, but any person considering himself entitled to recover the amount of such deposit may sue to recover the same from a person to whom it has been paid.

Bar of suits.

This reproduces in effect section 151 of the Act of 1926, which reproduced section 118 of the Act of 1901 and corresponded to section 69 (4), Bengal Tenancy Act.

A suit for recovery of a deposit of rent is in Schedule IV, Group A, No 1. The limitation years from the date when the amount deposited has been paid by the Tahsildar. The plaintiff pays court fee as in the Court Fees Act. It lies, when not exceeding Rs. 200 in value, in the Court of an Assistant Collector of the second class, with an appeal to the Collector, and when above that value, in the Court of an Assistant Collectors of the first class with a right of appeal to the Civil Court.

#### *Produce rents.*

**141. (1)** When the rent is based on an estimate or appraisement of the standing crop, the tenant shall be entitled to the exclusive possession of the crop.

Rights and liabilities in respect of produce.

**(2)** When the rent is payable by a division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

**(3)** In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder.

**(4)** If the tenant removes any portion of the produce, contrary to the provisions of sub-section (2) the produce may, for the purpose of making an award under the provisions of section 143, be deemed to have been equal to that of the best crop of

the same kind grown at that harvest on similar land in the neighbourhood.

The section corresponds to section 137 of the Agra Act of 1926.

Clause (4) embodies the wellknown rule of law "*omnia præsumuntur contra Spoliatorem*" (Every presumption is made against a wrong-doer).

**142.** (1) When the rent is payable by a division of the produce or is based on an estimate or appraisal of the standing crop—

Application for officer to make division, estimate or appraisal.

(a) if either the landholder or the tenant neglects to attend at the proper time, or

(b) if there is a dispute about the division, quantity or value of the produce,

an application may be presented by either party to the tahsildar requesting that an officer be deputed to make the division, estimate or appraisal.

(2) With the application the applicant shall deposit such fee as may be prescribed by the Provincial Government in rules made in this behalf.

1. The section reproduces in effect section 138 of the Act of 1926 and corresponds to section 31 of the Oudh Act.

**Rent.**—See section 3(18), **Landholder**—See section 3(11), **Tenant**—See section 3(23).

2. The application should be made while the crop is standing,<sup>1</sup> and should be acted upon before the crops are cut, but if the Kanungo or other officer appointed for the purpose neglects his duty, that is no reason for refusing appraisal, etc., altogether.<sup>2</sup> It must be made by all the joint landholders of a holding.<sup>3</sup> The procedure of this section is not available when the landholder and the tenant have by agreement altered the produce into cash rent.<sup>4</sup>

3. The Local Government has made the following rules 150, 151 and 152, Revenue Court Manual Rules:

150. The officer to be deputed under section 142 of the Act to make a division, estimate or appointment, shall ordinarily be the *Kurk-Amin*.

151. The officer deputed above shall make his report within 2 days from the date on which he gives the award under section 143 (6) of the Act.

152. The fee to be deposited with an application under section 142 of the Act shall be one rupee. The fee shall be levied in cash and paid

<sup>1</sup> *Sheo Tahal v. Muh. Baksh Ali Khan*, I U. D. 136.

<sup>2</sup> *Ganga Prasad v. Gauri Shanker*, B. R. 1 of 1886.

<sup>3</sup> *Ib.*

<sup>4</sup> *Nukhoda Singh v. Bipu Mardan*, 4 C. W. N. 239.



by the Court into the Treasury and the Treasury receipt therefor shall be filed with the record.

4. An application under section 142 falls in Group C (No. 4) of the Fourth Schedule and shall be made to the Tahsildar. It is cognisable by him. There is no limitation for it. It should bear a Court-fee as under the Court-Fees Act.

**143.** (1) On receiving such application, the tahsildar shall issue a written notice to the opposite party to attend on the date and at the time and place specified in the notice, and shall depute an officer by whom such division, estimate or appraisal shall be made.

Procedure on such application

(2) If the opposite party objects that the rent is not payable by division of the produce or is not based on an estimate or appraisal of the standing crop, or that no amount is to be paid, such officer shall record the objection, but shall proceed as hereinafter provided.

(3) Such officer shall call on each of the parties to appoint, and shall himself appoint, a resident of the neighbourhood, as an assessor to assist in the division of the produce, or in the estimate or appraisal of the crop.

(4) If either party fails to attend, or refuses to appoint an assessor, such officer shall nominate an assessor on his behalf.

(5) Such officer shall record the opinions of the assessors and, in making his award, shall have regard thereto.

(6) In the case of a division of the produce, if the parties agree to the manner of division proposed by the officer, the division shall be made accordingly. If the parties do not agree to such manner of division, and in all cases in which the rent is based on an estimate or appraisal of the standing crop or in which it is claimed that no rent is payable, such officer shall make an estimate of the value of the produce or crop and determine the amount to be paid. He shall then deliver his award and submit it with a report of his proceedings to the tahsildar.

(7) Notice shall be issued to the parties that the award has been delivered and they shall be entitled to file objections to the award within one week of the date of service of such notice; and the tahsildar shall after hearing such objections and making such further inquiry as may appear to be necessary confirm, modify or set aside the award and if any amount is found due shall pass an order for the payment of such amount and costs, if any, and such order shall have the effect of a decree for arrears of rent:

Provided that if the amount awarded under sub-section (6) exceeds two hundred rupees the tahsildar shall forward the case to the assistant collector in charge of the sub-division, who shall dispose of it in accordance with the provisions of sub-section (7).

1. The section reproduces in effect section 139 of the Act of 1926 and corresponds to section 32 of the Oudh Act.

Section 139 of the Act of 1926 reproduced section 106 of Act II of 1901. Certain clauses corresponded to clauses (b), (c), (d) and (e) of section 43 of the Rent Acts of 1873 and 1881 and to section 70 of the Bengal Tenancy Act.

The proviso is new and assures that a dispute, when the award exceeds in amount Rs. 200, be decided by an Assistant Collector in charge of the subdivision.

2. **Shall record the objection, etc.** The officer has no power to decide such objection judicially, but has simply to put it on record with a view to its being considered if necessary, by the Court later on. Hence a decision by the officer regarding liability for rent which is denied is *ultra vires*.<sup>1</sup> The appraisement, etc., should not however, be delayed on account of the objection, but should be proceeded with as if it had not been made.

3 **Determine the amount to be paid.** These words do not empower an officer appointed under section 143 to determine the *rate* of rent. His jurisdiction is confined to "division, estimate or appraisement" mentioned in clause (1) and repeated in clause (3).<sup>2</sup> A dispute as to the *rate* of rent must be decided by the Court itself. Or a separate suit may be brought to have the question determined.

4. **Objection.**—The Court has to consider the objection filed within a week of the date of service of notice. It is made obligatory that notice should be issued to be parties that the award has been delivered.

An objection as to non-joinder of other co-sharers as plaintiffs is under this section.<sup>3</sup>

5. **Such order.**—An order for payment of rent, when passed, has the force of a decree for arrears. The Board had in a Circular No. 14, Dep. II—984 (4) of 1905, dated the 16th of June, 1905 ruled that Courts should not order payment of the rent determined by the Amin under clause (6) unless an objection to it has been taken under clause (7) and decided by it. That is, if no objection to the rent determined by the Amin has been taken, the Court should ignore that part of the award.

6. **Revision** was allowed in *Ram Gharib v. Sarju*,<sup>4</sup> where the Courts below did not give effect to the plea that plaintiff was not entitled to a decree for the entire rent if there were other co-sharers.

<sup>1</sup> *Harnarain v. Ram Nihora*, 23 A. W. N. 40, and see also *Jafar Khan v. Ghulam Muhammad*, 23 A. W. N. 41.

<sup>2</sup> *Rahim Bakh v. Ahmad Ali*, 4 A. L. J. 488.

<sup>3</sup> *Ram Gharib v. Sarju*, 11 U. D. 454.

<sup>4</sup> 11 U. D. 454.

7. Under the rules framed for the purpose the *Kurk Amin* shall ordinarily be the officer to make division, estimate or appraisal, and the officer deputed is to make his report within two days from the date on which he gives his award under section 139 (6). See rules 150, 151 of the Revenue Court Manual quoted above at p. 435.

**144.** If rent which is based on an estimate or appraisal of the standing crop or which is payable by a division of the produce is in arrears and no order having the effect of a decree for arrears of rent has been passed under the provisions of sub-section (7) of section 143, the landholder may bring a suit for the recovery of such arrears. In either case the court shall determine the rent in accordance with the provisions of Chapter VI.

This section is new and was inserted to settle a conflict of views which existed as shown by the following

A suit for the money equivalent of an arrear of rent payable in kind is one for arrears of rent.<sup>1</sup> and hence a landholder may sue for the money equivalent of his share in the crops within three years as provided by Schedule IV, Group A, No. 2, although the crops are not on the spot.<sup>2</sup> There was a conflict of views between the Board of Revenue<sup>3</sup> and the High Court which has now been settled in favour of the High Court view by this section and item 2 of Group A of Schedule IV. The plaintiff cannot expect the Court to accept, without strict proof, his high estimate of the produce or of its value.<sup>4</sup> In the absence of evidence i.e., to the actual produce of the land during the years in suit the court may decree the rent for these years at the rate decreed in a previous suit for an earlier year.<sup>5</sup>

A suit will lie only when the rent is in arrears and its amount is in dispute and no order having the effect of a decree under section 143 (7) has been passed. The court is in such a suit bound to determine the rent in accordance with the provisions of Chapter VI and then to pass a decree accordingly.

**145.** The rent of a tenant shall be payable in the following instalments and at the following dates:—

*Instalments how fixed.*

(a) If the instalments and dates have been agreed on by the parties to the tenancy, the instalments and dates so agreed on ;

<sup>1</sup> So also held in *Taj-ud din v. Ram Prasad*, 1 All. 217.

<sup>2</sup> As held also in *Indra Pratab v. Shewak Rai*, 1931 A. L. J. 1094=XIII U. D. (H. C.) 16; *Bisheshar Nath v. Abdul*, 1934 A. L. J. 228=XV U. D. (H. C.) 14; *Jadu Dube v. Dasrath Rai*, 1935 A. L. J. 544=XVI U. D. 263.

<sup>3</sup> See *Muhammad Bashir v. Nathu*, B. R. 3 of 1929=X U. D. (B. R.) 48, 136; *Ram Dayal v. Shib Narain Singh*, VIII U. D. 13=9 L. R. Rev. 140.

<sup>4</sup> *Ganga Bullabh v. Ratan Singh*, XIX U. D. 136=1938 R. D. 331.

<sup>5</sup> *Kulwant v. Harpal Singh*, 1934 A. L. B. Oadh 97=II O. W. N. 70=18 B. D. 40=XV U. D. (H. C.) 86.

(b) in the absence of any such agreement, if the instalments and dates have been determined and recorded by a settlement officer, the instalments and dates, so determined and recorded ;

(c) in other cases, in instalments proportionate to the land revenue instalments payable one month before the dates appointed for the payment of such instalments.

This section reproduces in effect section 129 of the Act of 1926. Clause (c) of section 129 has been much modified by clause (c) of this section which fixes a uniform period of one month. Section 129 of the Act of 1926 reproduced section 99 of the Act of 1901 and the gist of the Government notification on the subject.

### *Arrears*

**146.** Any instalment of rent not paid on or before the day when it falls due becomes an arrear on the day following the day it fell due and the tenant shall thereupon become liable to pay interest on the arrear at the rate of one anna per rupee per annum simple interest.

1. This section reproduces in effect section 131 of the Agra Act of 1926. The section also corresponds to section 141 of the Oudh Act. Cf. section 12 also of the Oudh Act. Section 131 of the Act 1926 reproduced section 101 of the Act of 1901, and corresponded to section 212 of the Rent Acts of 1873 and 1881 and section 54 (3) of the Bengal Tenancy Act. The provisions as to payment of interest correspond to section 34 (a) of the Rent Acts and section 21 of Bengal Act, VIII of 1869 and section 69 of the Bengal Tenancy Act. Act 7 of 1934 substituted twelve annas for one rupee.

The rate of interest is now reduced to one anna per rupee per year, i. e.,  $6\frac{1}{4}$  p. c.

2. A question will arise whether the provision as to the reduction of the rate of interest to  $6\frac{1}{4}$  p. c. p. a. or less is not *ultra vires* as repugnant to the Contract Act, which allows a reasonable rate, and the Agra Tenancy Act, section 132. Rate of interest is a matter of contract which is in List III of the Government of India Act. The Agra Tenancy Act is an existing Indian Law as defined in section 311 of that Act. It fixed the rate of interest at 12 annas p. c. p. a. or 9 p. c. p. a. Under section 106 (1) a provincial enactment repugnant to an existing Indian law on a subject in List III is null and void unless the procedure of section 107 (2) was resorted to.

3. A *guzaradar* holding from a talukadar on the condition of paying revenue, malikana and sawal, the *guzara* being resumable in certain events, and not being transferable, is a tenant holding under a special agreement, liable to pay interest <sup>1</sup>

<sup>1</sup> *Sheo Raj v. Sri Prakash*, 5 O. L. J. 141—III U. D. 148.

By a compromise settlement decree between *A* and *B*, *A* took one-fourth of an estate and had to pay half the Government revenue *plus* ten per cent. talukdari dues on such revenue to *B*. This is not rent payable by *A* as tenant to *B*, on arrears of which interest may be awarded; nor does section 73, Contract Act or the Interest Act help *B*.<sup>1</sup>

A thekadar is liable to pay rent, though he is not included in the category of tenants, and a suit for arrears of rent will be under section 148. The amount payable by him is rent as defined in the Act. The liability of the thekadar to pay interest was enforced under section 73, Contract Act, or under the terms of the theka itself.<sup>2</sup> A tenant holding under a special agreement or decree of court is a tenant and will have to pay interest on arrears of rent.<sup>3</sup>

4. **In arrear.**—Rent which is tendered to the proper person in proper time is not in arrear, as that term involves the existence of some default on the part of the debtor.<sup>4</sup> Payment under the landholder's directions to another or for a specified purpose of a sum equivalent to the amount claimed as rent is *tantamount* to payment to the landholder.<sup>5</sup> As section 4 takes away the power of a tenant to contract himself out of the benefits of the Act, it follows that he cannot, by any lease, contract to pay a higher rate of interest than that mentioned in the particular enactment in force at the time.<sup>6</sup> This is also the view under section 67 read with section 178 (3) (b) of the Bengal Tenancy Act.<sup>7</sup>

*Q.*—Whether compound interest can be charged or stipulated for.

The expression "agreed" in section 143 seems to suggest that parties may arrange for any number of instalments; *e.g.*, for monthly instalments, and if so, interest would begin to run on each instalment as it falls due. Calcutta rulings to the contrary have no application on account of the special terms of section 67, Bengal Tenancy Act.

5. **Interest.**—The section has no retrospective effect. Hence up to the date of the Act, interest will be calculated at 12 annas per cent per month and thereafter at the rate of one anna per rupee per annum simple interest.<sup>8</sup>

<sup>1</sup> *Ganesh v. Harihar Baksh*, 31 I A 116—26 All. 299 (P. C.) 7 O. C. 1162.

<sup>2</sup> *Kifait Ullah v. Partab Bahadur Singh*, 21 I C. 82, *Udit Narain Singh v. Rampal Singh*, 12 O. C. 149—2 I. C. 920.

<sup>3</sup> *Ib.*

<sup>4</sup> *Kripasindhu v. Annada Sundari*, 35 Cal. 34; *Jagat Tarini v. Nabagopal*, 34 Cal. 305.

<sup>5</sup> *Jai Kumar v. Furlong*, W. R. Sp. No. 1864, Act X 112.

<sup>6</sup> *Abdul Rahman v. Jagatjit*, 3 O. W. N. 153 Sup.—97 I. C. 917.

<sup>7</sup> *Narendra Kumar v. Gora Chand*, 33 Cal. 633; *Manohar v. Khettra Nath*, 17 O. W. N. 820—18 C. L. J. 175—19 I. C. 625.

<sup>8</sup> See *Zamin Ali v. Sankatha Prasad*, 1935 O. W. N. 1128—1935 R. D. 487—1936 A. I. R. Oudh 83—158 I. C. 714.

If a land-holder chooses to wait three years and sues to recover arrears under section 148, as if the grain rent was cash rent, the court should not allow interest at a higher rate (*sawai* rate) than in the case of a suit for rent on a cash basis.<sup>1</sup>

6. **Shall be liable to pay interest.**—This indicates the tenant's liability but does not render it obligatory on the Court to decree any interest or interest at one anna per rupee per year. The Court is to be guided by what is just and equitable under the circumstances and in a proper case, *e.g.*, where the rent has been offered and refused, may refuse to award any interest at all.<sup>2</sup> The tender of rent must be of the full amount due for the instalment or year for which it is made and not of any lesser sum otherwise the liability to pay interest on arrears remains and the Court will not ordinarily be justified in refusing it. Under the present Act, a tenant has the right of appropriating payment to any instalment or year he likes and the landholder is not justified in refusing to accept a payment so appropriated because something remains due to him for other instalments or years. He has three years to sue for rent, and the fact that he has brought his suit after a considerable time but within the period of limitation will not disentitle him to interest. Or the court may reduce the rate of interest where equity requires it.<sup>3</sup> For instance, where a landholder sues for a much larger sum than what is actually found due to him and it does not appear that the tenant would have refused to pay the smaller sum if asked to, the rate of interest may be reduced to six per cent. as was done in *Fuseehun v. Ashruf-un-nissa*.<sup>4</sup> The discretion should be exercised on very clear grounds.<sup>5</sup>

Interest at the rate of 6½ annas per cent. is payable in the absence of a contract to the contrary. A landholder may agree not to charge, or waive his right to, interest, or may consent to a lower rate; but section 4 (1) shows that a tenant cannot burden himself with a higher rate.

A tenant cannot contract himself out of the benefit of this section either directly or indirectly by agreeing to pay rent in a number of instalments larger than the usual.<sup>6</sup> Mere omission to charge interest on arrears in the past is not waiver.<sup>7</sup>

If a lease executed prior to the commencement of this Act stipulated for a higher rate and the tenant held on after the expiry of the lease,

<sup>1</sup> *Raj Kumar Rai v. Ram Lakhan*, XIX U. D. 137=1938 B. D. 169.

<sup>2</sup> See *Kripa Sindhu v. Annada Sundari*, 35 Cal. 34.

<sup>3</sup> See *Nobokonath v. Baradakanth*, 1 W. R. 100; *Kashee Nath v. Myn-ud-deen*, 1 W. R. 154.

<sup>4</sup> 22 W. R. 463.

<sup>5</sup> *Johoory v. Bullub*, 5 Cal. 102.

<sup>6</sup> See *Narendra v. Gorachand*, 33 Cal. 633.

<sup>7</sup> *Johoory v. Bullub*, 5 Cal. 102; *Rutty Kant v. Gungadhur*, W. R. F. B. 13; *Shyama Charan v. Heras Mollah*, 9 Cal. 160.

he cannot be charged interest at the lease rate, but as provided by section 146<sup>1</sup> The interest awarded by the section is simple.

A suit for interest alone on an arrear of rent lies in a revenue court.<sup>2</sup>

**147.** No decree for arrears of rent shall be executed by the arrest or detention of a tenant.

Prohibition of arrest or detention for arrears.

1. This section is new. It provides an absolute immunity from arrest or detention, under a decree for arrears of rent.

A *thekadar* is entitled to the protection of this section. (*Vide* section 219.)

Landholders may in many cases find it difficult to realise their rents quickly or at all, for ejectment of a tenant means under the present Act wiping out all claims for rent.

2. This section is repugnant to an existing Indian Law, *viz.*, section 51(c) of the Code of Civil Procedure, which is item No 4 in List III of the Government of India Act, 1935, and would, therefore, be void under section 104(1) of the same unless the procedure of section 107(2) be adopted.

**148.** Except as otherwise provided by this Act, an arrear of rent shall be recoverable by suit, or by notice through the tahsildar, in accordance with the provisions of this Act.

Methods of recovering arrears.

1. This section reproduces sub-section (1) of section 132 of the Act of 1926, with the addition of the words "except as otherwise provided by this Act" and the omission of the words "or by distraint," and "or in any one or more of such ways." The section corresponds to section 108 (2) of the Oudh Act.

Section 132 reproduced with slight alterations section 102 of the Act of 1901.

**Rent.**—See section 3(18). **Tenant**—See section 3(23).

2. **Except as otherwise Act.**—Refers to cases, *inter alia*, where the Act prohibits the recovery, or recovery by any of the modes indicated, *e. g.*, when rent has been suspended or remitted or when ejectment has been effected.

Where in proceedings under the resumption Chapter, the first court fixes a rate and declares a muafi-holder a tenant, he becomes a tenant from the date of the order, although the rent is varied on appeal.<sup>3</sup>

When the amount of rent is disputed the court should come to a finding as to it.<sup>4</sup> But the section does not authorise the court to fix the

<sup>1</sup> See *Alim v. Salis Chandra*, 24 Cal. 37; *A. G. v. Ashraf Ali*, 28 Cal. 227.

<sup>2</sup> *Jagan Nath v. Murao*, 111 U. D. 178=4 R. D. 128.

<sup>3</sup> *Gajraj Singh v. Bhagwan Din*, 14 O. C. 58.

<sup>4</sup> *Kartik Prasad v. Jitan*, 11 U. D. 559.

rent for the first time and then decree it. The fixation must first be made in a proper suit, and then suit for arrears may be brought.<sup>1</sup>

The court cannot decree arrears at an enhanced rate on basis of a custom entry unless the rent has been sanctioned by court under section 36 Land Revenue Act or in an enhancement proceeding.<sup>2</sup>

Where several persons enter into an agreement as to rent with the landholder, each one of them is personally liable for rent, although such decree may not be enforceable against all such persons by ejectment proceedings.<sup>3</sup>

The fact that a person becomes an exproprietary tenant after his being adjudicated insolvent, and has not been discharged, does not prevent recovery of arrears of rent of the holding from him.<sup>4</sup>

But payment of rent to a lambardar who is an undischarged insolvent is not in good faith.<sup>5</sup>

It is not necessary in a suit for arrears of rent against a person recorded as *qabiz* for several years—the real tenants having either abandoned or lost in some manner—that the landlords should get correction of records first.<sup>6</sup>

A *kabuliat* for a term exceeding a year although it may not be a lease is evidence of the rent reserved and payable.<sup>7</sup>

Where a suit for arrears of rent is dismissed on the finding that the land was *abadi*, though let for agricultural purposes, the tenant is liable to pay rent if he continues in occupation.<sup>8</sup>

Where the landlord prevents the tenant from cultivating the land and the land lies uncultivated, he cannot claim arrears of rent for that period.<sup>9</sup>

Where a landlord mortgaged his interest in a tenant's holding to the tenant himself, on *bisui* mortgage, i. e., on the terms that the tenants would deduct the interest on the mortgage from the rent and pay the difference (called the *paramsana*) to the landlord, the latter is rent and may be sued for under section 148.<sup>10</sup>

<sup>1</sup> *Kundan v. Jauahar Singh*, 1938 A. L. J. 985=1938 A. I. R. All. 617=1938 R. D. 804.

<sup>2</sup> *Bishun Nath v. Juti Ram Lagan*, 1939 A. L. J. 617=1939 A. I. R. All. 500=1939 R. D. 234; *Rurjit Singh v. Puran Chandar Singh*, B. R. 13 of 1884.

<sup>3</sup> *Har Sarup v. Tohfu Singh*, X U. D. (H. C.) 63.

<sup>4</sup> *Natha Mal v. Desraj*, XV U. D. 236=15 L. R. Rev. 373; *Mata Prasad v. Ram Adhin*, XV U. D. 503=16 L. R. Rev. 98.

<sup>5</sup> *Janki Ballabh v. Pran Sukh*, XV U. D. 372.

<sup>6</sup> *Dharam Das v. Data Din*, 15 L. R. Rev. 632=XV U. D. 368.

<sup>7</sup> *Udit Narain Singh v. Rampul Singh*, 12 O. C. 140=2 I. C. 920; *Raj Kuer v. Nabi Baksh*, 9 O. C. 296; *Muhammad Husain v. Court of Wards*, 9 O. C. 362.

<sup>8</sup> *Chunna v. Ram Partab Singh*, XX U. D. 164=1939 R. D. 129.

<sup>9</sup> *Ram Pal Singh v. Abdul Hamid*, 1934 A. I. R. Oudh 97=18 R. D. 66.

<sup>10</sup> *Satdeo v. Jai Nath*, 1922 A. I. R. Oudh 75=9 O. L. J. 141=67 I. C. 808.



Where the plaintiff is the mortgagor holding under a voidable or void transfer, he can succeed if he proves a contract, expressed or implied, of tenancy between him and defendant.<sup>1</sup>

And the landlord remains entitled to the rent even though his right of redemption is extinguished,<sup>2</sup> and a civil suit does not lie to get over a revenue court decree as to this.<sup>3</sup>

**3. Under-Proprietor's Rent**—A person declared to be an under-proprietor under section 107-H, Oudh Act, was held not liable for the rent assessed under that section until the date of declaration made in the decree.<sup>4</sup>

The amount fixed by the settlement court as an under-proprietary rent cannot be altered.<sup>5</sup>

Under-proprietary rent is not *malkana*, and suit for its recovery was governed by section 132, Oudh Rent Act, and not by Article No. 132, Limitation Act.<sup>6</sup>

A suit for recovery by a superior proprietor of the patwari rate due from an under-proprietor with whom a sub-settlement of the whole village had been made was held to be, under section 108(2) of the Oudh Act, for rent.<sup>7</sup>

Plaintiff sued to recover a sum alleged to be due to him from defendants as agents employed by him to collect rent, or as arrears of rent payable by them as *thekadars* of the village. The court in which it was filed was competent to entertain it either as a suit under clause (5) or as a suit under clause (2) of section 108 of the Oudh Act. The finding was that the defendants were liable under clause (2) as *thekadars*. The suit should not be dismissed on the ground that the plaint contained inconsistent allegations.<sup>8</sup>

**4. Grain rent.**—When the plaintiff set up a definite case of grain rent it is for him to show how much grain was raised, the portion of it due to him and the value thereof at the market rate. He cannot rely upon the statistics of other years; and the court cannot strike a *mean* rate to arrive at the amount due to him.<sup>9</sup>

When rent was payable in kind and the tenant had negligently omitted to cultivate, there could be no suit for the money equivalent

<sup>1</sup> *Mathura Ram v. Jan Khan*, XX U. D. 120—1938 R. D. 85.

<sup>2</sup> *Ib.*

<sup>3</sup> *Ib.*

<sup>4</sup> *Partab Bahadur Singh v. Bajrang Bali Singh*, 11 O. C. 187.

<sup>5</sup> *Jai Patter Singh v. Ram Rattan Lal*, 1 O. C. 124.

<sup>6</sup> *Brahma Din v. Sangam Lal*, 1938 O. W. N. 1368—1939 R. D. 50—A. I. R. Oudh 57.

<sup>7</sup> *Hor Charan Das v. Pirthi Raj Singh*, 11 O. C. 326, over ruling (Oudh) Rent Act, Ruling No. 73. But see *Deputy Commissioner v. Narayan Das*, 12 O. C. 205.

<sup>8</sup> *Jafri v. Taleyar Khan*, 1 O. C. 88.

<sup>9</sup> *Bindeshwari Prasad Singh v. Bisheshwar Singh*, 2 O. L. J. 383—30 I. C. 499.

of the rent. Hence the landlord's remedy was not a suit under this section but a civil suit for damages.<sup>1</sup>

To obviate the difficulty presented by the last case *kabuliats* sometimes stipulated for rent in words to the effect that if the tenant neglected to cultivate or grow good crops, the landlord would be competent to realise according to certain standard; and if the tenant refused to deliver the landlord's share of the crops raised, he would pay a certain sum. If crops were grown and the landlord sued for the money equivalent to his share, he could not be met with the plea that he was entitled only to the amount fixed.<sup>2</sup> This at first sight seems to be in conflict with *Basiruddi v. Afsarunnissa*.<sup>3</sup> The question really depends on whether the *kabuliat* or lease vested the option in the tenant or the landlord. If the tenant had the option of paying in kind or a sum of money agreed upon, and he elected to pay the money, the landlord could not insist upon being paid the value of his share in the crop.<sup>4</sup>

This was much more so when the quantity of grain to be delivered was specified,<sup>5</sup> unless an intention to the contrary, viz., that the real contract was the market value, was inferable.<sup>6</sup>

The fact that the landlord had accepted a money rent for some years did not preclude him from insisting upon being paid in kind or the money equivalent.<sup>7</sup> When rent was payable, partly in cash and partly in kind, and the value of the latter was fixed the tenant was liable to pay the fixed sum only for the rent in kind.<sup>8</sup>

If the price of the grain was fixed at a certain rate, and the total of the cash and grain rent reserved by a *mokurrari maurusi* lease was put down at a sum which was the aggregate of the two, and there was a clause against increase or abatement, the rent was deemed to be a fixed one, and the landlord could recover only at the rate of the aggregate sums, as the lease was *mokurrari maurusi*.<sup>9</sup>

**5 Alternative remedies** — Under the Agra Act of 1926 the remedies open to the landholder, viz., suit, distraint and notice, could be availed

<sup>1</sup> *Sri Krishna Lal v. Ghulam Subhani*, 17 O. C. 55=1 O. L. J. 147=23 I. C. 460. *Contra*, *Inderpal Singh v. Bafati*, 20 A. L. J. 771.

<sup>2</sup> *Kalikanta Das v. Mohesh Chandra*, 40 I. C. 836 (C).

<sup>3</sup> 21 C. W. N. 860=40 I. C. 833.

<sup>4</sup> *Nilmadhab v. Keshub Lal*, 26 C. L. J. 94=40 I. C. 819; *Pran Krishna v. Mohesh Chandra*, 47 I. C. 134 (C); *Gurudas v. Gobinda Chandra*, 24 C. W. N. 85,=54 I. C. 914.

<sup>5</sup> *Sasi Bhusan v. Umakanto*, 20 C. L. J. 153=19 C. W. N. 1143=25 I. C. 171; *Atul Chandra v. Esan Ali*, 13 I. C. 423 (C); *Afar v. Surja Kumar*, 12 C. L. J. 649=15 C. W. N. 249=7 I. C. 842; *Ananda Chandra v. Makram Ali*, 10 C. L. J. 144=3 I. C. 204.

<sup>6</sup> *Akbar Ali v. Durga Kirpa*, 12 C. L. J. 589=8 I. C. 944; *Isaf v. Gopal Chandra*, 12 C. L. J. 598=8 I. C. 896.

<sup>7</sup> *Sohobut Ali v. Abdool Ali*, 3 C. W. N. 151.

<sup>8</sup> *Dwarka Nath v. Durijendra*, 30 C. L. J. 35=33 I. C. 103.

<sup>9</sup> *Asutosh v. Har Charan*, 23 C. W. N. 1021=47 Cal. 133=53 I. C. 328.

of simultaneously. But now the position has been changed. In the first place the remedy by way of distraint has been taken away and secondly the two remedies that now exist, *viz*, suit and notice cannot be resorted to simultaneously. By the omission of the words "or in one or more of such ways" the remedies have been made only alternative.

An application for notice under section 163 is not a suit, although on contest it is deemed to be one. It is doubtful whether this puts it in precisely the same category as a suit. The notice is to pay up or to be ejected and on contest the decree will be to pay up or be ejected. When the application is contested, it is to be tried, if exceeding Rs. 200 in value, by the Assistant Collector in charge of the sub-division. The application itself falls in Group C and even when contested it does not find a place in Group A.

A suit under section 148 is one for money only; it is triable, if exceeding Rs. 200 in value, by an Assistant Collector of the first class and is in Group A.

It was held that a suit for arrears for the *rabi* of a year, the previous *khari* instalment being then due and not included in the suit because the plaintiff had started distraint proceedings for it, barred a subsequent suit for *khari* instalment as the distraint proceedings proved infructuous.<sup>1</sup>

6. **Payment to one of several co-owners in good faith is payment to all.**<sup>2</sup> So is payment in good faith to a proprietor whose interest has in fact been sold under section 50, Transfer of Property Act.

**Partner's contribution.**—The contribution to be made by a person taken into partnership by a tenant towards the rent is not rent as between the two and a suit by the tenant against his partner is not for rent and is cognisable by a small cause Court.<sup>3</sup>

7. **Who may sue.**—A suit for arrears of rent must be brought by one to whom it is payable. Where the *lambardar* collects the rents, he alone can bring such a suit.<sup>4</sup>

A *lambardar* of a village who has no proprietary interest in one of its *pattis*—it having been assigned by imperfect partition to one of the co-sharers exclusively—cannot sue a tenant of that *patti* for arrears of rent,<sup>5</sup> and payment of rent to him is not in good faith.<sup>6</sup>

<sup>1</sup> *Kishan Lal v. Shri Ram*, XVIII U. D. 261=1937 R. D. 394.

<sup>2</sup> *Odit Naram v. Hudson*, 2 W. R. Act X, 15; *Mookta Keshi v. Koylash*, 7 W. R. 493.

<sup>3</sup> *Ram Nath v. Sikhdar Singh*, 40 All. 51=15 A. L. J. 862=45 I. C. 323=4 R. and Cr. L. J. 15.

<sup>4</sup> See *Paras Ram v. Bholai*, B. R. 21 of 1884; *Sardar Singh v. Puhup Singh*, B. R. 1 of 1897; *Deepa v. Udai*, B. R. 6 of 1903; even for rent due before his appointment, *Mojiz Fatima v. Ali Akbar*, 42 All. 414=18 A. L. J. 435=56 I. C. 112=19 U. D. 770=1 L. R. Rev. 121=6 R. D. 353.

<sup>5</sup> *Sundar Lal v. Subedar Singh*, 1932 A. L. J. 507=1932 A. I. R. All. 416; *Khan Ali Khan v. Minsi-ul-zaman Khan*, 1931 A. L. J. 1068=1932 A. I. R. All. 152=134 I. C. 455=16 R. D. 22.

<sup>6</sup> *Bahra Kishori Chand v. Jamna Bai*, XVIII U. D. 55=1937 R. D. 56.

And the co-sharer whose patti has been assigned may sue in a civil court for a declaration that the lambardar has no right to collect the rents thereof.<sup>1</sup>

Where a co-sharer by custom or contract collects his share of the rent alone, he may sue for it under section 246 (2) : but where the rent is payable to several persons jointly, all must sue, section 246 (1), or those who refuse may be joined as defendants, section 246 (3). A mortgagee of an occupancy holding whose mortgage is illegal cannot recover rent from a subtenant, even if let by him, where the subtenant has paid the rent to the original tenant.<sup>2</sup>

A pre-emptor is not entitled to sue until he has paid the price fixed for pre-emption by the court.<sup>3</sup>

On dismissal of a vendee's suit for arrears of rent (in which the vendor is also implicated) on the plea that defendants are proprietors, the vendor has right of appeal, as he is obviously affected by the dismissal.<sup>4</sup>

This was a single judge decision by which the case was remanded. After remand, the lower court dismissed the suit on the merits and the vendor again appealed to the High Court, the vendee not having appealed. Then two judges ruled that he had no right to appeal praying that a decree be passed in plaintiff's (vendee's) favour.<sup>5</sup>

Order 2, rule 2, C. P. C. applies and a part of the rent not sued for or relinquished in a suit cannot be sued for subsequently.<sup>6</sup>

A person who has assigned the rent recoverable by him in respect of a *birt* land cannot sue for arrears of rent from the *birt*-holder so long as the mortgage subsists.<sup>7</sup>

The *sir*-holder collects the rents of the actual cultivators, the *shikmis*, and hence the lambardar cannot sue to recover arrears of rent from *shikmis* if he is not a co-sharer in the *patti* in which the *sir* is situate.<sup>8</sup>

A mortgagee, not in possession, of an occupancy holding, cannot sue a sub-tenant for rent,<sup>9</sup> unless he has sub-let the land to or received rent from him.<sup>10</sup>

<sup>1</sup> *Khan Ali Khan v. Masit ul-zaman Khan*, 1931 A. L. J. 1068.

<sup>2</sup> *Ata Husain v. Ramman Lal*, 78 I. C. 539=1924 A. I. R. All. 710.

<sup>3</sup> *Budhi v. Nanhaku*, XI U. D. 234.

<sup>4</sup> *Nirmul Singh v. Zamiruddin Khan*, 1935 A. I. R. All. 984=XVI U. D. (H. C.) 570.

<sup>5</sup> *Nirmal Singh v. Zamiruddin Khan*, 1937 A. L. J. 296=XVIII U. D. (H. C.) 32=1937 R. D. 151.

<sup>6</sup> Oudh Rent Act Ruling 4f 3.

<sup>7</sup> *Sheo Ratan Singh v. Jagan Nath*, XVII U. D. (H. C.) 217=1936 R. D. 533.

<sup>8</sup> *Gurdin v. Abdul Wahab*, II U. D. 423. See *Nikhal v. Thakur Din*, II U. D. 521, as to when a *sir*-holder has usufructually mortgaged his right.

<sup>9</sup> *Kesho v. Babu Lal*, B. R. 2 of 1897.

<sup>10</sup> *Kanahya Lal v. Mata Dayal*, B. R. 4 of 1901.

When another person has established a superior right to that of a recorded owner, the tenant may insist upon the suit being dismissed.<sup>1</sup>

8. **What may be sued for.**—The suit must be for arrears at the rate agreed or determined and where it has been enhanced, at the enhanced rate. But if the landholder has given up his right to demand rent at the latter rate, he will not be allowed to go back on his contract.<sup>2</sup> A provision in a sublease that the sub-tenant may pay direct to the headlessor will not preclude the sublessor from suing for any arrears of rent that have not been paid by the sub-tenant either to himself or to the headlessor.<sup>3</sup>

But the sublessor cannot recover the rent payable by him which has been paid by the sublessee under the terms of the sublease to the zamindar.<sup>4</sup>

Payment of rent made in good faith by a tenant to the recorded proprietor absolves the tenant from liability to another co-sharer.

One suit for rent of *sir* and *khudkasht* of different periods held under one engagement is maintainable.<sup>5</sup>

Insolvency of the tenant did not bar a suit under section 16 (2) Insolvency Act of 1907.<sup>6</sup>

Now, the institution of a suit for arrears of rent against an adjudicated insolvent tenant is not permissible. A landholder may however sue for arrears a tenant who has applied to be but has not been declared an insolvent, and a decree may be passed against him.<sup>7</sup>

9. **Parties to suit.**—A mortgagee of the holding is not a necessary party.<sup>8</sup>

10. **Instalments**—A decree to pay arrears in instalments is not warranted.<sup>9</sup>

The provisions of O. 20, R. II, Civil Procedure Code, are inconsistent with these sections, as regards tenants other than fixed-rate or permanent tenureholders; and hence a court has no power to pass a decree for arrears of rent payable by instalments.<sup>10</sup>

<sup>1</sup> *Rani Raghubans Kuer v. Hashmat Ali*, 7 O. C. 78.

<sup>2</sup> *Ranjit v. Kori*, B R 5 of 1883.

<sup>3</sup> *Baldeo v. Gokul*, B. R. 18 of 1883.

<sup>4</sup> *Khushalo v. Itwari*, XIII U. D. 59.

<sup>5</sup> *Naubat Singh v. Jai Ram Singh*, 1927 A. I. R. All. 724=8 L. R. Rev 300=VIII U. D. (H. C.) 270=1927 R. C. 336=105 I. C. 880=11 R. D. 301.

<sup>6</sup> *Kalka Das v. Gajju Singh*, 43 All. 510=19 A. L. J. 439=1921 A. I. R. All 13=62 I. C. 897=3 U P L. R. (A.) 73; *Ali Ahmad v. Brij Ratan*, 7 Rev and Cr. L. J. 298=B. R. 4 of 1921=IV U. D. liii=3 L. R. Rev. 339.

<sup>7</sup> *Muh. Ishaq Khan v. Kalloo*, XVII U. D. 137, 182.

<sup>8</sup> *Balwant Singh v. Faizullah*, 31 I. C. 456=I U. D. 292.

<sup>9</sup> *Liladhar v. Lalji*, I U. D. 255.

<sup>10</sup> *Harakh Chand v. Safida Begam*, 54 All. 521=1932 A. I. R. All. 436=1932 A L. J. 315=13 L. R. Rev. 146=16 R. D. 325=XIII U. D. (H. C.) 67.

A decree cannot be passed against a surety for attachment before judgment nor can his property be attached.<sup>1</sup> A decree cannot be passed for an instalment of arrears not claimed in the plaint.<sup>2</sup>

11. **Substitution of another contract**—Where a bond is taken for the balance of rent due, a suit on the bond lies in a Civil Court,<sup>3</sup> so a suit for the balance of rent due on an adjustment of accounts between the landholder and the tenant,<sup>4</sup> so a suit for arrears against the buyer of tenant's crops who was allowed by the landholder to remove them on a promise to pay up the arrears.<sup>5</sup>

An award made by arbitrators as to the amount of rent payable by a tenant to his landlord awarded a certain sum to the landlord.<sup>6</sup> A suit to enforce the terms of the award could be brought in a Civil Court, as the suit was not for arrears of rent but for the breach of a contract.<sup>6</sup>

Payment of rent in good faith to the recorded proprietor absolves the payer from liability to an other claimant.<sup>7</sup>

*Siaha* unsigned by the payer is not evidence of the payment of rent.<sup>8</sup>

If the landholder accepts rent from the mortgagee of a holding he cannot again sue the tenant for the same rent.<sup>9</sup>

12. **Suit**—A suit for arrears of rent falls in Group A (No 2) of the Fourth Schedule. Where the amount claimed does not exceed Rs. 200, it is triable by an Assistant Collector of the second class and the plaint must be filed in the Court of the Tahsildar and an appeal from the decision lies to the Collector. Where the amount claimed exceeds Rs. 200, the suit is triable by an Assistant Collector of the first class. In Oudh, a difficulty may arise as to jurisdiction. Under the Oudh Act, suits of value not exceeding Rs. 100 lay in the Court of a second class Assistant Collector with a right of first appeal to the Collector. Now a rent suit valued at Rs. 200 or less is cognizable by an Assistant Collector of the second class with a right of appeal to the Collector. The limitation is three years from fifteen days after the arrear became due. The court-fee is assessed on the amount claimed. The plaint shall give the particulars mentioned in O. 7, Civil Procedure Code, and specify the name of the village or mahal and the pargana or other local division in which the land in respect of which

<sup>1</sup> *Raj Bahadur v. Ram Dei*, IV U. D. 620.

<sup>2</sup> *Bhim Sen v. Chokhey Singh*, 9 L. R. Rev. 286—IX U. D. 96—12 R. D. 700.

<sup>3</sup> *Jai Ram v. Sheo Shampat*, 5 N. W. P. 84.

<sup>4</sup> *Dooley Chand v. Goordayal*, 24 W. R. 218.

<sup>5</sup> *Achul v. Ganga Pershad*, 2 Agra 73.

<sup>6</sup> *Ram Sarup v. Sant Baksh Singh*, (Oudh) Sel. Ca. No. 218.

<sup>7</sup> *Kallu v. Kishore Kuar*, B R. 4 of 1885.

<sup>8</sup> *Suchit v. Manohar*, XVIII U. D. 298—1937 R. D. 459.

<sup>9</sup> *Iqbal Narain v. Dewka*, 8 O. L. R. 11.

the rent is claimed is situated, and (unless such land can be otherwise adequately described) the number of each field according to the Government survey. It shall also contain a statement of account showing the annual demand for each period to which the suit relates, the amount (if any) received and the amount to be due.<sup>1</sup> The decree shall state the amount (including interest) due on account of each agricultural year in respect of which relief has been granted.<sup>2</sup>

Such a suit is within the exclusive jurisdiction of Revenue Courts, provided the rent has been fixed by agreement between the parties or by a Court of Revenue. Because the rent is not assessed, the landholder cannot sue the occupier in a Civil Court for compensation for use and occupation.<sup>3</sup>

Addition of a prayer for determination of rent does not take the suit out of this section.<sup>4</sup>

A suit under this section cannot be decreed until the correct rent is proved or if none exists until it is fixed.<sup>5</sup>

A suit for arrears against a lessee of agricultural land is one under this section<sup>6</sup>; so is a suit against the heir of a deceased tenant, who has succeeded to and taken the holding, for arrears which accrued in the latter's lifetime.<sup>7</sup> But a suit for such arrears against the heir of a deceased tenant who does not take up the holding is outside the scope of this section, as such heir is not the successor in interest of the deceased in the holding.

A suit to pay an additional sum for a year for which rent has already been paid does not lie in a Revenue Court.<sup>8</sup> An amount entered as *zaid mutalaba* in the papers cannot be sued for,<sup>9</sup> unless it is deemed to be part of the rent. A suit for damages for not sowing crops in a year where rent is half the produce is one for rent.<sup>10</sup>

<sup>1</sup> Serial No. 8 of List II of the Second Schedule

<sup>2</sup> Serial No. 9 of same.

<sup>3</sup> *Ram Prasad v. Dinakuar*, 4 All. 515=2 A. W. N. 121; *Dhyan v. Thakur*, 2 A. W. N. 138.

<sup>4</sup> *Kalka v. Ram Suchit*, VI U. D. (H. C.) 482=6 L. R. Rev. (Oudh) 85=12 O. L. J. 362=2 O. W. N. 499=89 I. C. 511=1925 R. C. 382.

<sup>5</sup> *Bhagwan Din v. Bhola Bux*, 1941 R. D. 337.

<sup>6</sup> *Nagar Mal v. Macpherson*, 3 All. 766=1 A. W. N. 66.

<sup>7</sup> *Lekhraj v. Rai Singh*, 14 All. 381=12 A. W. N. 143.

<sup>8</sup> *Maharaja of Benares v. Abdulla*, IV U. D. 206=2 U. P. L. R. (B. R.) 94=60 I. C. 255=6 R. and Cr. L. J. 271=6 R. D. 409.

<sup>9</sup> *Dharam Narain v. Durga Dei*, 9 L. R. Rev. 300=IX U. D. 144=12 R. D. 631.

<sup>10</sup> *Narendra Pal Singh v. Bajati*, 45 All. 7=20 A. L. J. 771=1923 A. I. R. All. 50=V U. D. (H. C.) 106=1922 R. C. 337=8 R. and Cr. L. J. 273=68 I. C. 985=4 U. P. L. R. (A.) 206=3 L. R. Rev. 477=7 R. D. 11.

A suit by *A* against *B* for his share of the produce of a tank to which both are entitled is not between landholder and tenant and lies in a Civil Court.<sup>1</sup>

An assignee of arrears of rent which had accrued due at the date of the assignment can and must sue for them in a Revenue Court.<sup>2</sup>

Section 163 empowers a landholder to apply for a notice to a tenant to pay up his arrears or to be ejected. The proceeding becomes a suit when the tenant appears to contest the notice.

*A* sued *B* in a Revenue Court for ejectment as well as for arrears of rent. Both suits were dismissed. *A* now sued *B* and others in a Civil Court praying for declaration of his proprietary title, for a permanent injunction restraining *B* from paying rent to the other defendants and for the arrears of rent already paid by *B* to the other defendants. *Held*, the suit was properly brought as the claim for arrears was not against the tenant *B*, but against the other defendants, rival zamindars.<sup>3</sup>

A suit for ejectment under section 61. Ondb Act for rent not having been paid was held not to be based on the same cause of action as one for recovery of the arrears of rent due. Hence its abatement and consequent dismissal did not under O. 22 r. 9, C. P. C. bar a subsequent suit for the recovery of such arrears due in respect of the land.<sup>4</sup>

Where in a previous suit for arrears of rent the plaintiff failed to prove that the defendant was a tenant-at-will the decision was held not to be *res judicata* in a subsequent suit for arrears of rent claimed from the defendant as an exproprietary tenant<sup>5</sup>. Failure to raise, in a suit for arrears of rent, a plea that the defendant was not liable to pay rent and that there was no valid lease precludes the tenant from raising that plea in a subsequent suit for arrears.<sup>6</sup>

*Grove*.—A suit for the share of the value of fruits of a grove payable on account of the grove lies in a Revenue Court.<sup>7</sup>

**149.** A co-tenant who has paid rent on account of another co-tenant or from whom such rent has been recovered may sue such co-tenant for the amount so paid.  
Suit against co-tenant.

<sup>1</sup> *Samwalia v. Nathi Lal*, 47 All. 920=1925 A. I. R. All 561=23 A. L. J. 560=VI U. D. (H. C.) 520=6 L. R. Rev. 188=(1925) R. C. 373=88 I. C. 504=9 R. D. 154.

<sup>2</sup> *Nathu Lal v. Kewal Ram*, 57 All. 230=1934 A. L. J. 848=1934 A. I. R. All. 893=XV U. D. (H. C.) 201=15 L. R. 493; *Dwarkan Singh v. Jafar Ali Khan*, XV U. D. (H. C.) 257=15 L. R. Rev. 593=1934 A. L. J. Note p. 851=1934 A. I. R. All. 1066=4 A. N. R. 393=151 I. C. 967=1934 A. L. R. 926=18 R. D. 468; *Ram Charan Das v. Nazferan*, 1935 A. L. J. 341=1935 A. I. R. All 342=XVI U. D. 121=1935 R. D. 92.

<sup>3</sup> *Ram Gobind Singh v. Mathura Prasad*, II U. D. 685.

<sup>4</sup> *Kailas Chandra v. Sarjoo*, XVIII U. D. (H. C.) 52=1937 R. D. 154.

<sup>5</sup> *Bhan Partab Sahai v. Sheo Dat Bahadur Singh*, 15 O. C. 45=15 I. C. 189.

<sup>6</sup> *Partap Naram Singh v. Ragho*, 7 O. C. 169.

<sup>7</sup> *Raghubar Rao v. Madho*, 15 A. L. J. 623=41 I. C. 908.



This section is new.

The section does not authorise a Court decreeing the suit to award any interest.

The suit is at No. 3 of Group A of Schedule IV. If not exceeding Rs. 200, it lies in the Court of an Assistant Collector 2nd class, with a right of appeal to the Collector. If above that figure it must be brought in the Court of an Assistant Collector of the first class with a right of appeal to the Civil Court. The limitation is three years from the date of payment or recovery. Court-fee is payable according to the Court-Fees Act.

**150.** (1) A plaintiff may unite in the same suit several claims for arrears of rent against the same tenant, provided that they are in respect of holdings situated in the same village.

Joinder of claims  
for arrears.

(2) In such a suit the decree shall specify separately the amount, if any, found due in respect of the several holdings.

This section reproduces section 133 of the Agra Act of 1926.

Views previously held were similar.<sup>1</sup>

Where on a partition of a mahal the land of a holding is distributed in two or more new mahals, a separate suit may be brought in respect of the land in each new mahal.<sup>2</sup> In the Benares division a *taluga* means an area in one or more villages held under one engagement, and unless it is proved that rent is payable for each village separately, a suit cannot be brought in respect of the fields in a single village when they form a portion of the holding.<sup>3</sup>

The word 'holdings' is important. If there is one holding of land in more mahals than one belonging to the same zamindar one suit in respect of the rent of it will not be bad.<sup>4</sup>

**151.** (1) If it appears to a court passing a decree in a suit for arrears of rent that the area of the holding was so decreased by diluvion or otherwise, or that the produce thereof was so diminished by drought, hail, deposit of sand or other like calamity during the period for which the arrear is claimed that the full

Remission for calamity  
by court decreasing claim  
for arrears.

<sup>1</sup> *Rudra Partab v. Gajadhar Singh*, 14 O. C. 287; *Badri Din v. Mathura Prasad*, XV U. D. 408; *Badri Narain v. Mahesh*, IV U. D. 687, but see *Jagannath Prasad v. Tore*, 3 A. L. J. 610.

<sup>2</sup> *Bhup Narain Rai v. Sri Thakur Radha Krishna Ji* VI U. D. (H. C.) 219=5 L. R. Rev 211=1924 R. C. 41=9 R. D. 431.

<sup>3</sup> *Sri Radha Krishnaji v. Sarju Rai*, B. R. 1 of 1925=VI U. D. (B. R.) LXXII=1925 R. C. 145.

<sup>4</sup> *Data Ram v. Jhau Lal*, 1936 A. I. R. All. 200=XVI U. D. 563=1935 R. D. 442.

amount of rent payable by the tenant for that period cannot be equitably decreed, the court may, with the sanction of the collector, allow such remission from the rent payable by the tenant for that period as may appear to it to be just.

(2) An order of the collector under sub-section (1), giving or refusing sanction to a remission of rent, shall not be questioned in any civil or revenue court.

(3) Nothing in this section shall be deemed to authorize any remission in the rent payable by a permanent tenure-holder, or a thekadar or, except when the area of a holding is decreased by diluvion, by a fixed-rate tenant.

(4) No remission made under the provisions of this section shall be deemed to vary the rent payable by the tenant otherwise than for the period in respect of which such remission was made.

(5) When a court allows remission under this section the Provincial Government or any authority empowered by it in this behalf shall order consequential remissions of rent and revenue in accordance with the principles contained in the Sixth Schedule :

Provided that nothing in this sub-section shall affect tracts assessed to revenue for periods of five or eight years.

(6) The provisions of this section shall not apply to alluvial tracts in which there is a local custom providing for remissions of the rent of holdings, the culturable area of which has been decreased by diluvion, deposit of sand, or the like causes.

1. This section reproduces section 72 of the Agra Act of 1926 substituting in sub-section (3) "except when the area of a holding is decreased by diluvion, by a fixed-rate tenant" for "fixed-rate tenant," with certain other alterations. It also corresponds to section 19 of the Oudh Act.

Section 72 of the Act of 1926 in effect reproduced section 50 of the Act of 1901.

2. The court must be satisfied that the decrease of area or production is such that the full rent cannot be equitably decreed. The mere fact of decrease is not sufficient.

There is nothing in the section to prevent its application to tenants holding land in revenue-free villages ; and therefore if the Collector has sanctioned the remission of the rent of a tenant in such a village, no Civil or Revenue Court can, as shown by sub-section (2), question the remission.<sup>1</sup>

3. **Sub-section 6.** - If a local custom is proved, or admitted, the Court has to ignore the section altogether and act according to the custom. It has not to get the sanction of the Collector nor has the latter to consider

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<sup>1</sup> *Jaideo Das v. Bhagwandin*, S. A. No. 102 of 1911, decided on 20th January, 1912.

any question of abatement of the revenue demand. If no such custom exists or is proved, the Court has to apply the section.

The difficulty that arose in *Juthi Upadhaya v. Kesho Prasad Singh*,<sup>1</sup> no longer exists, for now the sub-section expressly says "in which there is a local custom." In the repealed words use "...claimed...under any local custom". "Local custom" means an existing local custom and not one which is merely alleged but is not proved. When a custom is alleged but not substantiated the court may act under sub-section (1).

To justify the application of the subsection, the following things are necessary :—

- (i) the existence of a local custom of remission of rent :
- (ii) the custom should provide that in case of a decrease in the culturable area by diluvion or deposit of sand or the like causes, a part of the rent would not be realisable, and
- (iii) the area to which the custom relates falls under the description of alluvial tract.

**152.** Any person to whom any sum is due on account of canal dues under section 47 of the Northern India Canal and Drainage Act, 1873, may sue for the recovery of such sum.

Suit for arrears of irrigation dues.

This section is new as it stands. The corresponding section in the Agra Act of 1926 was section 136, which has now been materially altered. Now there can be a suit for canal dues but they are not on the same footing as arrears of rent. This makes useless the decision in *Shankar v. Desraj*.<sup>2</sup>

The suit is No. 4, Group A of the Fourth Schedule. The limitation is three years from the date of delivery of canal *jamabandi* and the court-fee is as provided in the Court-Fees Act.

**153.** Arrears of rent due in respect of Crown property or in respect of an estate attached under the provisions of section 150 of the United Provinces Land Revenue Act, 1901, may be recovered in accordance with the provisions of sections 39 to 42 of the United Provinces Court of Wards Act, 1912, as if they were arrears due in respect of property under the charge of the Court of Wards.

1. This section corresponds to section 132 (2) of the Act of 1926.
2. Provisions of the Court of Wards Act, sections 39 to 41, of the Act of 1912 are made applicable to the recovery of rents in all Government property. Those sections are reproduced below :—

Section 39(1) Notwithstanding anything to the contrary contained in the Agra Tenancy Act, 1901, the Oudh Rent Act, 1886, or the United

<sup>1</sup> 54 All. 753=1932 A. L. J. 495=1932 A. I. R. All. 481=138 I. C. 84=16 R. D. 406.

<sup>2</sup> 20 U. D. 221=1939 R. D. 238.

Provinces Local and Rural Police Rates Act, 1906, arrears of rent, rates and cesses due by underproprietors, farmers or tenants in respect of property under the charge of the Court of Wards (whether such rates, rents and cesses became due before or after the Court of Wards took charge) may, under the order of the Collector of the district in which such property is situated be recovered as arrears of land revenue by any process by which arrears of land revenue may, for the time being, be recovered.

(2) Nothing in this section and the next three following sections shall be held to prevent the Collector from proceeding under section 185, United Provinces Land Revenue Act, 1901, in any case to which that section applies.

Section 40(1). When a Collector decides to proceed under the last preceding section he shall, on being satisfied that the arrear is due and that payment thereof has been demanded, grant a certificate stating the amount due and the person by whom it is payable and such certificate, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(2) The certificate shall be for the amount of all arrear and interest due and recoverable under the Agra Tenancy Act, 1901, the Oudh Rent Act, 1886, or the United Provinces Local and Rural Police Act, 1906, and there shall be payable in respect thereof a court-fee of the same amount as is payable under the Court-Fees Act for the time being in force in respect of a plaint for the amount under section 102 of the Agra Tenancy Act, 1901, or section 108A (2) of the Oudh Rent Act, 1886, and the amount of such court-fee may be included in the amount for which the certificate is given.

Section 41 (1) If the person named in the certificate denies his liability for the amount named therein or any part thereof he may, within 30 days of receiving notice thereof or if no notice is given, within 30 days after any process for realising the amount or enforcing the certificate has been executed, present a petition to the Collector stating the ground of his denial :

(2) The Collector may ;

- (i) reject such petition summarily ; or
- (ii) after such inquiry as he thinks fit, amend or cancel the certificate or suspend its execution for such time as he may think fit ; or
- (iii) remit the certificate and petition to any Rent Court having jurisdiction, to be dealt with as a suit between the Manager and the petitioner and the certificate shall thereupon be treated as a plaint duly presented under the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886.

Section 42 provides that in cases (i) and (ii), or if the petition and certificate have not been remitted to be dealt with as in (iii) of section 41 the unsuccessful applicant may file a suit.

154. (1) In case of any general refusal to pay rent or any demand on account of canal dues to persons entitled to collect the same in any local area the Provincial Government may, by notification in the official *Gazette*, declare that such rents or demands may be recovered as arrears of land revenue.

Recovery of arrears in the event of general refusal to pay.

(2) In any local area to which a notification made under sub-section (1) applies, a landholder or any other person to whom an arrear of rent or of canal dues is due, may notwithstanding anything to the contrary in this or any other enactment for the time being in force, instead of suing for recovery of the arrear under this Act, apply in writing to the collector to realize the same, and the collector shall after satisfying himself that the amount claimed is due, proceed, subject to rules made by the Board, to recover such amount with costs and interest as an arrear of land revenue.

(3) The collector shall not be made a defendant in any suit in respect of an amount for the recovery of which an order has been passed under this section.

(4) Nothing herein contained and no order passed under this section shall debar—

(a) a landholder from recovering by suit or application any amount due to him which has not been recovered under this section ;

(b) a person from whom any amount has been recovered under this section, in excess of the amount due from him, from recovering such excess by suit against the landholder or other person on whose application the arrear was realized.

1. This section reproduces in effect section 132A of the Act of 1926, omitting sub-section (3). Sub section (4) reproduces the last portion of sub-section (5). Section 132A of the Agra Act adopted section 12A of the Oudh Act.

The word "under-proprietor" has been omitted, as unnecessary on account of section 127. The portion of sub-section (5) prohibiting an appeal from an order of a Collector under the section has been omitted.

In Agra, Schedule IV did not provide any item for a proceeding as to give effect to section 132A, 5(a) or (b). The Oudh Act had section 108(a) on the point. Schedule IV of the present Act at item No. 5 provides for a suit under clause (b) of sub-section 4 of this section. The limitation is three years from the date when the excess was realised.

**Landholder**, see section 3(11) for meaning.

For meaning of **rent**, see section 3(18) and note No. 19 to that section.

2. **General refusal** to pay arrears of rent or canal dues is the sole reason for calling this section into aid ; and the Local Government is the sole judge whether this condition exists.

The drastic machinery of this section cannot be put into operation in respect of anything which does not fall under the conception of rent in section 3 (18) or a demand on account of canal dues, although the Local Government has made the section applicable to a given local area.

3. **Sub-section (2)**. Sub-section (2) gives the right to apply for action under the section to a landholder or any other person to whom an arrear of rent or of canal dues is due. On an application being made under the sub-section, the Collector has to satisfy himself (1) that the Local Government has by notification declared that in the particular area rents or canal dues may be recovered as arrears of land revenue, (2) that the application is in writing, (3) that the amount sought to be recovered is due and that rules made by the Board do not in any way impede or limit his action.

One way to challenge the order of the Collector under the section is a suit which falls within the purview of subsection (4). In the process of satisfying himself that the amount claimed is due, the Collector will have to see the exact amount of the rent of the holding and how much of it has been paid ; and where interest on arrears is also claimed whether such interest should be allowed.

4 **Sub-section (3)** exempts the Collector from being impleaded in a suit, presumably under sub-section (4)

5. **Sub-section (4)** confers the right of suit on i) landholders and (ii) persons from whom any amount in excess of the amount due from them has been realised, who are not satisfied with the justice of such order.

**Clause (b)** confers on a person a right to sue, when the amount recovered under the section is in excess of the amount due from him ; if nothing was due from him to the applicant landholder because the latter was not his landholder, or because no rent was fixed, or because the whole of the rent has been paid, the whole of the amount recovered under this section is in excess of the amount due. It is, however, open to doubt whether clause (b) applies to such a case. When the Collector has proceeded on the basis of a rent larger than that admitted by the tenant, or has allowed him credit for less than what he claimed as paid, the case is clearly within the sub-clause

**Procedure on applications.**—See Appendix 8 at the end of the book.

## CHAPTER VIII

## EJECTMENT

*General*

Application of some sections relating to tenants to permanent tenure-holders, etc.

**155.** In section 183, section 185 and section 186 and in no other sections of this Chapter "tenant" includes an under-proprietor, a permanent tenure-holder and a fixed-rate tenant.

This section is new. The exclusion contained in the words "and in no other section of this chapter" should be noted. The section is absolute in its terms without any exception or reservation, or control by other provisions of the Act or Chapter.

The provisions of sections 183, 185 and 186 have been made applicable to under-proprietors, permanent tenure-holders and fixed-rate tenants. These sections deal with remedies for wrongful ejectment—section 183 provides for a suit by a tenant wrongfully ejected, section 185 deals with the frame of such a suit and section 186 provides for the reinstatement of the tenant.

**156.** The provisions of this chapter relating to occupancy tenants shall apply to permanent lessees and to tenants holding under a special agreement or decree in Oudh, except in so far as they are inconsistent with the terms of the lease, agreement or decree under which they hold.

1. This is new. Cf. section 52 of the Oudh Act.
2. **Tenant holding under a special agreement**—See section 25 and notes thereunder.

Where a special agreement provides for ejectment on default in regular payment of rent, the landlord must proceed under section 163, or obtain first a decree for arrears of rent,<sup>1</sup> as there is no such inconsistency as is contemplated by the section. Where a term lessee is not to be ejected during the term of his lease so long as he keeps the rent regularly paid up, the landlord must wait until the end of the term to eject him in case the rent is paid up regularly.<sup>2</sup>

The special agreement, lease or decree must contain a power of re-entry on breach of a covenant or term in it; if it does not, a right of re-entry or ejectment will not arise—*e. g.*, if there is no right of re-entry reserved on the breach of a condition against alienation.<sup>3</sup>

<sup>1</sup> See *Bageshar v. Ram Adhiv*, II U. D. 388.

<sup>2</sup> See *Raghu Nath Prasad v. Gheesan*, II U. D. 80.

<sup>3</sup> *Bhikari v. Court of Wards*, I U. D. 178=1 O. L. J. 273=24 I. C. 780; *Lal Bahadur v. Muhammad Karim Khan*, Sel. C. No. 24; *Muhammad Khan v. Chedan*, 15 O. C. 91=15 I. C. 315; *Ajudhia Estate v. Lachmi Narain*, III U. D. 362; *Fateh Bahadur v. Nagesh Bahadur*, 7 O. L. J. 60=111 U. D. 618=55 I. C. 18; *Court of Wards v. Muhammad Ameer*, 5 O. L. J. 149=46 I. C. 72; *Indrapal v. Uman Raman*, IV U. D. 546.

3. In *Indrapal v. Uman Raman*<sup>1</sup> after referring to the case in III U. D. 619 decided by Mr. Harrison, the judgment proceeds:— Mr. Harrison refers to 15 O. C. 91, *Ali Muhammad Khan v. Chedan*, and states that in that case the law laid down is that where there is no express penalty of forfeiture in respect of a lease, a mortgage does not give a cause of action for ejectment, but a sale does, as it involves an entire abandonment of the lessee's rights in favour of another person. On the other hand in the case of *Katesar Estate v. Muhammad Amin*<sup>2</sup> the Additional Judicial Commissioner took a different view of the decision in question, and stated in his judgment that in 15 O. C. 91 'it was held that according to the general principles of law applicable to leases, a breach of any condition for which forfeiture was not prescribed as a penalty under the terms of the lease did not involve a forfeiture of the lease.' On referring to the original judgment in 15 O. C. 91, I find that the general principle was affirmed in the case, but the judgment goes on to say 'we note that it may well be that a distinction ought to be drawn between transfers by way of lease and transfer by way of sales,' and two cases are quoted by the court in which this distinction has been made. In selected decision 2 of 1914 the principle of law referred to above was affirmed by the Board, but that was the case of a mortgage. It would appear also from Mr. Harrison's judgment (in III U. D. 619) that the Judicial Commissioner had recently held that the sale of a portion of the rights secured by the lease in question in that very case was invalid against the *talukdar* and that the transferee was liable to ejectment by the Civil Court since he had never been recognised by the *talukdar* as a tenant by acceptance of rent. I have sent for the file in III U. D. 619 in order to see the judgment in the Judicial Commissioner's case referred to. I find it to be 2nd Civil Appeal No. 214 of 1917, *Ramanand v. Narendra Bahadur*, decided by Mr. Stuart, Additional Judicial Commissioner, on 30th July, 1917. He found that the lease is non-transferable, that it is immaterial that it reserves no right of re-entry since the *talukdar's* title is not based on the deed but on the fact that the defendant is a trespasser whose only claim to remain in the land is that he has purchased what proves to be a non-transferable right. Hence he directed his ejectment as trespasser; as Mr. Harrison says that the implication is that had rent been collected a tenancy would have been recognised and the remedy would have lain in the revenue courts. It was found, therefore, in III U. D. 619, that the purchaser had no rights other than those of a statutory tenant. In the similar case *Ram Nath v. Oudh Behari*<sup>3</sup> the Board held that a transferee from a person who claims to be something more than an ordinary tenant, but who has no transferable right in the land is simply an ordinary tenant. "The learned member proceeded to hold that the transferee defendant was not a trespasser (as the *talukdar* had treated him as a tenant), but a statutory tenant."

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<sup>1</sup> IV U. D. 546.

<sup>2</sup> 5 O. L. J. 149.

<sup>3</sup> 2 O. L. J. 727.



4. Failure to pay the rent due would be an implied ground for ejectment under an agreement, in the absence of a special contract to the contrary.<sup>1</sup>

To come under such sections as are referred to in the section, the agreement must provide for ejectment for a cause mentioned in such section.<sup>2</sup>

It was held that where the landlord had, contrary to the terms of the special agreement, enhanced the rent of a tenant holding under such agreement, which also provided for ejectment in case of rent falling into arrears, the tenant could claim the protection accorded to an occupancy tenant, as the liability to ejectment in case of arrears referred to the original rent.<sup>3</sup>

A suit for possession of trees and the land against a person holding on special terms on the ground that his right to possession had ceased is within the exclusive jurisdiction of revenue courts.<sup>4</sup>

**157.** No tenant shall be ejected from his holding otherwise than in accordance with the provisions of this Act.

Ejectment to be in accordance with the Act.

1 This reproduces section 77 of the Agra Act of 1926 and section A-52 of the Oudh Act.

Section 77 of the Act of 1926 reproduced section 56 of the Act of 1901 and corresponded to section 30 (b) of the Acts of 1881 and 1873, and section 21, proviso, of the Act of 1859.

2. Tenant in this section does not include an under-proprietor, a permanent tenure-holder or a fixed-rate tenant. Ejectment of such persons otherwise than in accordance with the provisions of the Act will not be necessarily wrongful.

This however does not mean that these classes of persons can be ejected anyhow. If they are wrongfully ejected the remedy of section 183 is open to them.

Ejectment is by notice or application in some cases, and by suit in others. Under-proprietors, permanent tenure holders and fixed-rate tenants are exempt from ejectment by notice or application.

3. **Tenant.**—See section 3, 23) for meaning of the term. The use of the word 'tenant' shows that provisions as to ejectment apply only to persons who are 'tenants' *qua* the persons seeking to eject; in other words there must be a relation of landholder and tenant, as defined in the act, to make Chapter VIII applicable. For instance, a landholder is not bound to proceed under this chapter against an occupier of his land who is not his tenant, *i. e.*, who is so far as he (the landholder) is concerned

<sup>1</sup> *Muhammad Ashgar Ali v. Nawab Ali*, XVI U. D. 446

<sup>2</sup> See *Har Karan v. Gaya Prasad* XV U. D. 152.

<sup>3</sup> *Shyam Behari Misra v. Ram Sunder*, XIV U. D. 451, =14 L. R. Rev. 360; See also *Lakhpur v. Jagdamba Devi*, XII U. D. 201 =12 L. R. Rev. 299.

<sup>4</sup> *Thakur Din v. Hulan*, 10 O. C. 188.

a mere trespasser,<sup>1</sup> or a sub-tenant of his tenant. The actual decision in this case was erroneous inasmuch as it held that a lessor could, before the expiration of the period of an existing lease in favour of *A* and without ejecting the lessee in due course of law or obtaining delivery of possession from him, grant a lease to another person, *B*, and in regard to such person the lessee was a trespasser. If *A* had been duly ejected, and then the lease had been passed to *B*, *B* would have become tenant, and the lessor cannot thereafter readmit *A* to the tenancy, and, if he does, *A* is as regards *B* a trespasser and may be ejected as such.<sup>2</sup> Suppose the lessor sues to eject *A* for illegal subletting and obtains a decree which is appealed from. Pending the appeal, he admits *B*, sub-tenant of *A*, to the holding, *i. e.*, makes him the tenant-in-chief. The appeal is successful. The result then is that *A* has always remained the tenant-in-chief and *B* the sub-tenant; and although the admission of *B* to the tenancy was bad in law, *B* remains a sub-tenant, who can be ejected only under the provisions of the Act and not as a trespasser.<sup>3</sup> Where a landholder, on the death of a tenant-in-chief, permitted the sub-tenant to continue in occupation of the land on the condition that he paid the arrears of rent due by the deceased the sub-tenant becomes the tenant-in-chief, and the landholder cannot confer on any other person tenancy rights by a lease at an enhanced rent.<sup>4</sup>

If the landholder of the deceased admitted the sub-tenant as his tenant-in-chief, the latter becomes a tenant-in-chief and the landholder by granting a permanent lease to another person cannot make the former sub-tenant of the latter, and create the relation of landholder and tenant between them. He is at least the assignee of rent.<sup>5</sup> The general rule is that a landholder cannot by granting a lease to a third person make the sitting tenant a sub-tenant of the lessee<sup>6</sup> and entitle the latter to eject the former, because having already let his premises he has nothing left to lease to another so long as the first lease subsists. Where a *thekadar* can admit tenants, a tenant admitted by him is in the position of a tenant admitted by the zamindar, who cannot therefore eject the *thekadar's* lessee before the expiration of the lease.<sup>7</sup>

Where the occupancy holding of a joint Hindu family is recorded in the name of its manager, his ejectment binds the family though the other members were no parties to the suit.<sup>8</sup> So where *A, B, C*, three

<sup>1</sup> *Lalu Ram v. Thakurdas*, 2 A. L. J. 156 (at p. 160) = 25 A. W. N. 53.

<sup>2</sup> *Budhu v. Bhola*, 1928 A. I. R. All. 681=1X U. D. (H. C.) 186=9 L. R. Rev. 241=111 I. C. 131=12 R. D. 378

<sup>3</sup> *Autar v. Bishun*, VIII U. D. 88=8 L. R. Rev. 319=1927 R. C. 364=11 R. D. 517.

<sup>4</sup> *Chandi v. Pragi*, XIII U. D. 44

<sup>5</sup> *Brijbasi v. Gadhapati*, 9 L. R. Rev. 287=10 L. R. Rev. 103=12 R. D. 701.

<sup>6</sup> *Ram Ablakh v. Ram Sumer*, VIII U. D. 83; *Bhagwan Din v. Bhabuti*, III U. D. 164; *Thakur Rai v. Naram Rai*, V U. D. 499; *Rikhdoo v. Raghu Nandan*, IV U. D. 648; *Brijbasi v. Gadhapati*, 10 L. R. Rev. 103=9 L. R. Rev. 287.

<sup>7</sup> *Gursaran v. Jagan Nath*, X U. D. (H. C.) 37=5 O. W. N. 42.

<sup>8</sup> *Lal Bahadur v. Sat Narain Prasad*, I U. D. 19.

sons, succeed to a holding, but *A*'s name is alone recorded, and *A* is ejected, it ends the rights of *B* and *C*, unless they assert their rights at the ejectment.<sup>1</sup> If *A* had been reinstated it would have been under a fresh contract.<sup>2</sup>

Where after letting in a sub-tenant from year to year, the tenant-in-chief surrendered, and zamindar granted a lease to another, the sub-tenant, after extinction of his rights, can be ejected by the lessee.<sup>3</sup>

4. **Otherwise than, etc.**—The procedure prescribed in Chapter VIII is the one to be followed in all cases of ejectment started after the commencement of this Act.

On the termination of a lease, a landholder can re-enter only by consent of the tenant,<sup>4</sup> or by ejectment proceedings under the Act.

Even where a custom allows re-entry by a landholder in certain contingencies, *e. g.*, sub-mergence and non-payment of rent by the tenant, the landholder must proceed according to the provisions of this section.<sup>5</sup> The same applies to a stipulation as to re-entry in a lease.<sup>7</sup> No suit will lie for the ejectment of a tenant by cancellation of the lease for non-payment of rent; but when a decree for arrears of rent is obtained the procedure of section 168 or 170 as the case may be resorted to.<sup>8</sup> The fact of a tenant taking a mortgage of the proprietary right in the land makes no difference. The tenancy right remains in abeyance, and redemption restores the parties to the *status quo ante*, so that the landholder can eject the tenant only as provided by this chapter.

A suit for ejectment from land leased for building purposes lies in a Civil Court.

**158.** Subject to the provisions of sections 159 and 160, when a tenant is ejected from the whole or any portion of his holding in execution of a decree or order of ejectment for arrears of rent, all arrears of rent, whether decreed or not, due in respect of such holding on the date of the delivery of possession shall be deemed to have been paid.

<sup>1</sup> *Gutha v. Khesraj*, 1 U. D. 127.

<sup>2</sup> *Ib.*

<sup>3</sup> See *Lakhi v. Bihari*, XIII U. D. 190=14 L. R. Rev. 77.

<sup>4</sup> See *Sitaram v. Chadambhal*, 1 Leg. Rem. 35, *Great Eastern Hotel Co. v. Collector of Allahabad*, 2 *Agra*, Ex. O. C. I.

<sup>5</sup> *Safaull Khan v. Woopcan*, 9 W. R. 123; *Ooma Lochun v. Nittayachand*, 14 W. R. 467; *Jumaut Ali v. Chutturdharee*, 16 W. R. 185; *Pirtheenath v. Shoo Sahai*, B. R. 33 of 1891; *Lachman v. Balsingh*, 5 All. 159; *Sitab Rai v. Ajudhia Prasad*, 10 All. 13=10 A. W. N. 269.

<sup>6</sup> *Kupil Rai v. Radha Prasad*, 5 All. 260=3 A. W. N. 14.

<sup>7</sup> *Solano v. Hoormat*, 1 Hay, 573.

<sup>8</sup> *Rajbansi Kuar v. Pheku Misr*, 2 A. W. N. 91; *Mohra v. Baldeo Sahai*, B. R. 5 of 1891. See also *Deo Saran v. Baldeo*, 22 A. W. N. 94.

<sup>9</sup> *Tika Ram v. Sri Thakurji-Deoji Maharaj*, 1934 A. I. R. All. 787=1934 A. L. J. 674=XV U. D. (H. C.) 51.

1. This section is new.

Under-proprietors, permanent tenure-holders and fixed rate tenants are not affected by this section.

The section is not applicable to leases governed by sections 11 and 13 of the Bundelkhand Alienation of Land Act<sup>1</sup>

2. Ejectment in execution of a decree or order for arrears of rent will mean the wiping out of all arrears of rent in respect of such holding which fell due before the actual ejectment.

A tenant's claim for compensation for improvements will be deemed to be wiped out under the same circumstances if it does not exceed the amount recoverable from the tenant as arrears of rent. (*Vide* section 159.)

Under the repealed Acts such ejectment left the arrears owing to be realised by the ordinary processes of law.<sup>2</sup>

Investigation into a claim for improvements and recording a finding<sup>3</sup> as to the amount, are conditions precedent to the passing of a decree or order for ejectment. (*Vide* section 159.)

The tenant is not saved from ejectment although the value of the improvements exceeds the rent due but ejectment is suspended until payment of the balance and may be cancelled if the landholder does not intend to pay it.<sup>4</sup>

A claim for compensation should not be delayed until after the close of the evidence.<sup>5</sup>

This section applies only to ejectments ordered after 1st January 1940 and not before.<sup>6</sup>

**159.** (1) A court deciding any proceeding by which a tenant is ejected from his holding or part thereof shall assess the amount of compensation due to the tenant on account of any improvement made by him.

Compensation for improvement on ejectment.

(2) If the compensation exceeds the amount recoverable from the tenant as arrears of rent, whether decreed or not, on account of the holding, together with costs if any, the decree or order for ejectment shall be conditional on the payment by the landholder of the balance due to the tenant within such time as the court may direct.

(3) If the compensation does not exceed the amount recoverable from the tenant as specified in sub-section (2) any claim made by the tenant for compensation shall be deemed to have been satisfied on his ejectment.

(4) If the court to which a claim under sub-section (1) is made is the court of an assistant collector of the second class,

<sup>1</sup> *Nathi v. Basit Ali*, XI U. D. 142=14 R. D. 479.

<sup>2</sup> *Fateh Singh v. Karam Ullah*, B. R. 17 of 1893=13 A. W. N. 217.

<sup>3</sup> *Badri Prasad v. Ram Nath*, II U. D. 634=3 Rev. and Cr. L. J. 283.

<sup>4</sup> *Bhagwan Sahay v. Sheo Baran Singh*, III U. D. 166=4 R. D. 15.

<sup>5</sup> *Gajraj Singh v. Phul Kuar*, XVIII U. D. 219.

<sup>6</sup> *Radhika Prasad v. Jiwan*, 1941 R. D. 169.

he shall forward the proceedings to the assistant collector in charge of the sub-division who shall dispose of the case as if it had been instituted before himself.

1. The section reproduces in effect section 78 of the Agra Act of 1926.

Section 78 of the Act of 1926 corresponded to section 61 of the Act of 1901. *Cf.* section 65 of the Oudh Act, read with sections 57 and 58.

2. Tenant in this section does not include an under-proprietor, a permanent tenure-holder or a fixed rate tenant. (*Vide* section 155.) A claim for compensation by any of these persons will fall under section 183

**160.** (1) If on the date of the delivery of possession to the landholder there exist on the holding any Right to crops and trees when ejectment takes effect. ungathered crops or any trees which are the property of the tenant, the court executing the decree shall proceed in the following manner :—

(a) if after deducting the compensation, if any, assessed under section 159, the amount due from the tenant is equal to or greater than the value of such crops or trees, the court shall deliver the possession of the holding to the landholder and all rights of the tenant in such crops or trees shall pass to the landholder ;

(b) if after deducting the compensation, if any, assessed under section 159, the amount due from the tenant is less than the value of such crops or trees, and

(i) the landholder pays the difference between such amount and such value to the tenant, the court shall deliver the possession of the holding to the landholder and all rights of the tenant in such crops or trees shall pass to the landholder ; or

(ii) the landholder does not pay such difference, the tenant shall have a right of tending, gathering or removing such crops or trees or fruits of such trees until such crops or trees have been gathered and removed or die or are cut down, as the case may be, paying such compensation for the use and occupation of land as the court may fix.

(2) On an application made by the tenant or the landholder the court executing the decree or the order of ejectment may determine the value of the crops or trees, and the compensation payable by the tenant under the provisions of clause (b) of sub-section (1).

(3) Nothing in this section shall apply to a person ejected from land under the provisions of section 180 and any crops or trees existing on such land at the time of the delivery of possession shall vest in the decree-holder.

1. This section corresponds to sections 97 and 98 of the *Agra Act* of 1926, to sections 74 and 75 of the *Act* of 1901 and to section 66 of the *Oudh Act*.

Under the *Oudh Act*, section 108 (9) (e) provided for a suit for compensation on account of the value of standing crops.<sup>1</sup> There is now no item in Schedule IV corresponding to it.

2. The landholder's option of purchase is confined to (a) ungathered crops, (b) trees planted in accordance with section 80, *i.e.*, scattered trees planted by a tenant on his holding, (c) trees planted in accordance with any law or custom in force when they were planted, and (d) trees which vest in the tenant under section 81. As the word crops includes shrubs, bushes and plants, which under the earlier Acts were held to fall under the expression "other products," occurring therein, it will be useful to note that "other products" included jasmine and *bela* plants,<sup>2</sup> rose plants and the flowers they bear<sup>3</sup>, (tenant was entitled to the value of such plants and the flowers, and such value may have to be calculated on averages, *ib.*)

3. A person against whom a decree under section 180 is passed is not a tenant entitled to the benefit of this section.<sup>4</sup>

It was held that sub-section (1) of section 97 of the *Act* of 1926 was really intended to cover cases such as orchards of fruit trees or gardens of rose bushes, which had a *quasi*-permanent character, but were not ordinary agricultural crops.<sup>5</sup>

On a decree for ejectment of a grove-holder under section 84 of the *Act* of 1926 (section 172 of the present *Act*) the grove-holder could not remove any trees before delivery of possession and when possession was delivered, it was over the grove land and the grove.<sup>6</sup>

Where in a suit for ejectment the tenant claimed in general terms compensation on account of the trees planted by him (and without payment of court-fees) it was held that compensation could not be given under section 78 (now section 159) but that it was open to the tenant to apply under section 98 of the *Act* of 1926 (present section 160). Now the terms of section 81 (1) must exist before action under this section is possible.<sup>7</sup>

<sup>1</sup> See *Gauri Shankar v. Bhagwan Din*, B. R. 8 of 1930.

<sup>2</sup> *Ram Prasad v. Suba Rai*, 32 All. 458=7 A. L. J. 397=6 I. C. 74.

<sup>3</sup> *Surajpal Singh v. Ramjit*, 1929 A. L. J. 267=1929 A. I. R. All. 341=10 L. R. Rev. 166=X U. D. (H. C.) 124=126 I. C. 226=13 R. D. 301; *Abdul Bari v. Mathura Prasad*, B. R. 22 of 1922.

<sup>4</sup> *Chuttan Lal v. Muh. Abdul Samad Khan*, B. R. 6 of 1929=11 L. R. Rev. 59=XI U. D. (S. D.) 3=15 R. D. 255, *Budhu v. Bhagwan Din*, XVII U. D. 12=1936 R. D. 28.

<sup>5</sup> *Chiranjiva Narain v. Musta*, 1938 A. L. J. (B. R.) 44=1938 R. D. 395=XIX U. D. 157.

<sup>6</sup> *Baqridi Mian v. Bhagwan Din*, 57 All. 922=1935 A. I. R. All. 608=1935 A. L. J. 521=1935 R. D. 220.

<sup>7</sup> *Mahesh Singh v. Moola*, 1938 A. L. J. (B. R.) 88=XIX U. D. 227=1938 R. D. 656.

4. The landholder has either to pay to the tenant the difference (between the amount due from the tenant and the value of his crops or trees) due to him or to let him have the crops or trees. He must exercise the option before he comes into court and when he exercises it he cannot resile from the position so taken up once.<sup>1</sup>

If the landholder does not exercise his option, the tenant has the right to use the land for tending, etc. of the crops and trees etc.

Where on refusal of the landholder to pay the difference between the amount due from the tenant and the value of the crops etc. the tenant re-enters to tend and cut the crops, he is not guilty of theft of the crops,<sup>2</sup> but if he then refuses to vacate, he becomes a trespasser,<sup>3</sup> and a suit to eject him lies in a Civil Court.<sup>4</sup> But see section 180.

5. In a case of dispute about the value of the crops or trees sub-section (2) will come into operation, but will the tenant's right to remain in possession cease under sub-section (1)? Clause (b) (ii) shows that it does not, for it declares a tenant entitled to use the land for a further period until the crops or trees have been gathered and remained or die or are cut down as the case may be. For that period he will not be a tenant<sup>5</sup>. A tenant has of course to pay a fair compensation for this further period of occupation as the court may fix.

But a difficulty may arise about the trees. The crops can be cut and removed in the harvesting season, but the trees may stand and bear fruits for years and years. How long will the tenant have the right of further use and occupation of the land with respect to the trees? And how the court fix the compensation? The section leaves the matter in doubt.

**161.** (1) Every notice to be issued to a tenant under this Chapter shall be filed by the landholder in duplicate, and shall contain the following particulars :—

Contents and service  
of notice.

(a) the name, description, and place of residence of the landholder ;

(b) the name, description, and place of residence of the tenant ;

(c) a description of the holding, specifying the name of the village and mahal and of the pargana or other local area in which the holding is situated ;

(d) the recorded numbers of the holding, and of each field, the amount of each instalment of rent, any portion of which is in arrears and the amount of such arrears.

<sup>1</sup> *Surajpal Singh v. Ramji*, 1929 A. L. J. 267=1929 A. L. R. 341=10 L. R. Rev. 166=X U. D. (H. C.) 124=129 I. C. 226=13 R. D. 301.

<sup>2</sup> *Jodha Singh v. K. E.*, 11 A. L. J. 270

<sup>3</sup> *Ram Singh v. Bhop (Pohap) Singh*, 1938 R. D. 593 ; *Jamna Prasad v. Ram Charan*, 111 U. D. 180=5 Rev. and Cr. L. J. 184=4 R. D. 31.

<sup>4</sup> *Muhammad Ibrahim v. Diwan*, 16 A. W. N. 166 ; *Bishnath v. Bhawani*, 1925 R. C. 288=4 L. R. Rev. 371=V U. D. 577=10 R. and Cr. L. J. 4=7 R. D. 365.

<sup>5</sup> *Ram Singh v. Bhop (Pohap) Singh*, 1938 R. D. 593.

(2) The manner of service of such notice on a tenant shall be that of the service of a summons by the court :

Provided that if the tenant is not found, or, refuses to accept the notice or to sign an acknowledgment, the notice will be served by affixing it to his usual place of residence in the presence of two persons who shall sign the notice in attestation of such service, and such service shall be deemed to be due service on the tenant :

Provided further, that no such notice shall be served through the post.

1. This section corresponds to parts of section 87(2) and section 88 of the Agra Act of 1926. The second proviso was the second proviso to the said section 88.

2. **The provisos.**—The first proviso should be noted as to the conditions for substituted service being deemed to be sufficient service.

The second proviso prohibits service of a notice through the post. This will supersede any rules about service of summons by post made by the High Court or the Chief Court under order V, C. P. C.

3. **Service of notice.**—The service will be according to the provisions of the Civil Procedure Code. Where non-service of notice is alleged, the fact must be enquired into.<sup>1</sup> Though the recorded tenants may be members of a joint Hindu family, each must be served.<sup>2</sup>

The utmost care shall be exercised in the service of the notice. Where a notice was served by affixation and the process-server reported that the whereabouts of the judgment-debtor were not known, it was held that proper care had not been exercised in effecting a personal service and that there was no service of the notice.<sup>3</sup> For, in the case of temporary absence from home, an effort should be made to ascertain the whereabouts. If such effort is not made, or on being made the proper address is ascertained, service by affixation is bad.<sup>4</sup>

The service should as far as possible be personal, and where a lady tenant is at the time of the service temporarily absent from home and is in a village not far off there is no impossibility in effecting personal service.<sup>5</sup>

Service of notice by affixation on a house owned but not occupied by the tenant, who lives in another village a mile away, is not good.<sup>6</sup>

In a proceeding commenced under section 79 of the Act of 1926 a minor co-tenant and his guardian were not served with such notices, which

<sup>1</sup> *Jai Nandan Singh v. Jivan*, III U. D. 538=4 R. D. 329

<sup>2</sup> *Deepa v. Bhagwanur*, 10 L. R. Rev. 106=X U. D. 19=13 R. D. 349.

<sup>3</sup> *Zalim v. Sri Ram* 32 I. C. 17=2 Rev. and Cr. L. J. 30=I U. D. 42.

<sup>4</sup> *Sakina v. Guuri Sahai*, 24 All. 302 ; *Ghurrao v. Surya Datt*, B. R. 17 of 1892 ; *Munshi Singh v. Jwala Prasad*, IX U. D. 120=9 L. R. Rev. 295=12 R. D. 667.

<sup>5</sup> *Dharma v. Tribeni Sahai*, XI U. D. 209=11 L. R. Rev. 343=14 R. D. 714.

<sup>6</sup> *Harihar Dutt v. Kapurthala Estate*, 11 L. R. Rev. 378=XII U. D. 157=15 R. D. 31.



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<sup>1</sup> *Surojpal Singh v. Ramjit*, 1929 A. L. J. 267=1929 A. I. R. All. 341=10 L. R. Rev. 166=X U. D. (H. C.) 124=129 I. C. 226=13 R. D. 301.

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(2) The manner of service of such notice on a tenant shall be that of the service of a summons by the court :

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3. **Service of notice.**—The service will be according to the provisions of the Civil Procedure Code. Where non-service of notice is alleged, the fact must be enquired into.<sup>1</sup> Though the recorded tenants may be members of a joint Hindu family, each must be served.<sup>2</sup>

The utmost care shall be exercised in the service of the notice. Where a notice was served by affixation and the process-server reported that the whereabouts of the judgment-debtor were not known, it was held that proper care had not been exercised in effecting a personal service and that there was no service of the notice.<sup>3</sup> For, in the case of temporary absence from home, an effort should be made to ascertain the whereabouts. If such effort is not made, or on being made the proper address is ascertained, service by affixation is bad.<sup>4</sup>

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<sup>6</sup> *Harishar Dutt v. Kapurthala Estate*, 11 L. R. Rev. 378—XII U. D. 157—15 R. D. 31.

were received by the co-tenant. On the date of hearing, the fact of the guardian's death being brought to the notice of the Court, the co-tenant was appointed the minor's guardian *ad litem* without complying with the requirements of Order 32, r. 3 (4) of the Code of Civil Procedure. The appointment was illegal and the minor was not properly represented and his ejectment under the section was not sustainable.<sup>1</sup>

The High Court view is different and is to the effect that the minor cannot treat as null and void an order of ejectment passed against him and his co-tenant under such circumstances unless he shows that the interest of the co-tenant was hostile to him or that he was really prejudiced by the ejectment order.

Where the judgment-debtors to a decree for arrears of rent were three brothers, and notices under sections 81 and 93 of the Act of 1926 were served on two of them personally and, as regards the third who was away on service, on one of the two remaining brothers, it was held that the service was not illegal and the order of ejectment could not be set aside.<sup>2</sup>

Where two out of five tenants, all closely related, were personally served, and notices for the other three were served on their brothers, each was held to be properly served, and it was also ruled that the court should not order notices to be issued under the proviso to section 93 of the Act of 1926.<sup>4</sup>

**162.** No tenant shall be liable to ejectment from his residential house in a village other than a house erected under the provisions of section 65 merely because he has been ejected from his holding in that village.

Immunity from ejectment from residential house on ejectment from holding.

1. This section reproduces section 128A of the Agra Act of 1926 and section 69A of the Oudh Act. These sections were added to the respective Acts by the U P Tenancy Laws (Amendment) Act No. XIII of 1939.

2. Ejectment from a holding does not entail ejectment from the residential house of the tenant, unless it be one erected under the provisions of section 65. Subsection (1) of that section gives liberty to permanent tenureholders, fixed rate tenants, occupancy tenants in Oudh and tenants holding on special terms in Oudh to make any improvement, which may include the erection of a house. But the remedy of ejectment is not open as against the first two, and hence this section will not come in their case, but is available against the other two. Subsection (2) of section 65 permits an occupancy tenant in Agra, an exproprietary or hereditary tenant to make any improvement, except *inter alia*, the erection on the holding or in its immediate vicinity, otherwise than on the village site, of buildings other than those which are improvements within section 3 (8) (i). A dwelling house erected on the holding by a tenant for his own

<sup>1</sup> *Bhikum Singh v. Lekhraj Singh*, 11 L. R. Rev 218=14 R. D. 459

<sup>2</sup> *Madho Singh v. Keshab Deo*, 1931 A. L. J. 1152=XIII U. D. (11 C) 36

<sup>3</sup> *Sona Mal v. Durga Narain*, X U. D. 61=10 L. R. Rev 397=13 R. D. 434.

<sup>4</sup> *Durga Narain Singh v. Patna*, X U. D. 207=14 R. D. 82.

occupation is an improvement under the latter. Hence the exception in section 65 (2) must exclude such dwelling house, and in the present section the words "other than a house erected under the provisions of section 65" mean a house which is not a dwelling house erected on the holding or its immediate vicinity but outside the village and not for the occupation of the tenant, with the written consent of the landholder or under the sanction of a local custom.

*Ejectment for arrears of rent.*

**163.** (1) A landholder may, between the first day of June and the thirty-first day of August, apply to the tahsildar for the issue of a notice to an ex-proprietary, an occupancy or a hereditary tenant for the payment of arrears of rent due by him and in default for ejectment from his holding, and the tahsildar shall forthwith issue such notice :

Application for issue of notice to ex-proprietary tenant, etc. for payment of arrears and for ejectment in default.

Provided that no application shall be made under this section for payment of an arrear which exceeds the amount of rent payable by the tenant for the holding in an agricultural year, or which on the date of the application has been outstanding for more than three years.

(2) A notice issued, under the provisions of sub-section (1) shall in addition to the particulars specified in section 161, specify the instalments of rent payable by the tenant for the holding in the future.

(3) The notice shall require the tenant to appear within fifteen days of the date of service of the notice and either to admit the claim or to contest it.

(4) If the tenant does not appear or appears and admits the arrear claimed and the instalments of rent specified in the notice the tahsildar shall pass an order directing him to pay into court such arrear and also, during the currency of such order, to pay into court the instalments of rent as they fall due :

Provided that if the order is passed *ex parte* the tenant may apply for setting aside such order and if he satisfies the court that either the notice was not served on him or that he had sufficient cause for non-appearance on the date fixed, the tahsildar shall set aside the order and shall proceed to hear the case in the manner hereinafter provided.

(5) If the tenant appears and contests the claim for arrears or pleads that he is not an ex-proprietary, an occupancy or a hereditary tenant, the application for the issue of notice shall, on payment of the court-fee as in a suit for arrears of rent, be deemed to be a suit for arrears of rent and the tahsildar shall

pass an order directing the tenant to pay to the court deciding such suit the instalments of rent specified in the notice as they fall due :

Provided that all cases in which the tenant pleads that he is not an ex-proprietary, an occupancy or a hereditary tenant, or which the tahsildar is not competent to try shall be forwarded to the assistant collector in charge of the sub-division.

(6) If in such suit the court finds that the tenant is an ex-proprietary, an occupancy or a hereditary tenant and that any amount is due by him it shall pass a decree directing him to pay such amount into court.

(7) If the tenant appears and pleads that he is not liable to pay the instalments specified in the notice, the tahsildar shall pass an order directing him during the currency of such order to pay into court such instalments or such less amounts as he may, for reasons to be recorded, determine.

(8) No appeal shall lie against an order of the tahsildar regarding the payment of instalments passed under the provisions of sub-section (5) or sub-section (7), but no such order shall be a bar to a suit under the provisions of this Act for determination of rent or for the recovery of arrears of rent.

(9) An application made under the provisions of this section may be amended, either by the addition of the names of joint tenants or otherwise, at any time up to fifteen days before the date on which the instalment of rent next following the date of the application falls due, and on such application being amended the tahsildar shall proceed as if the amendment had been made in the notice filed within the prescribed period.

1. The section corresponds in some respects to section 81 of the Agra Act of 1926 and to section 61 of the Oudh Act. The section applies to permanent lessees and tenants holding on special terms in Oudh to the extent indicated under section 156.

An application for issue of notice under section 163 (1) is at No. 5, Group C of the Fourth Schedule.

2. The landholder's right to apply to the Tahsildar arises when a tenant of one of the classes mentioned in the section is in arrears of rent the amount of which does not exceed the annual rent and which on the date of the application has not been outstanding for more than three years.

**For payment of the rent due by him.**—The tenant must be in arrear to attract this section against himself. The arrear must be in respect of an amount not exceeding an agricultural year's rent, such amount not have been outstanding for more than three years. The amount may be due in respect of an instalment of rent or of an agricultural year or of parts of rent due in respect of more than one instalment

or year, provided it does not exceed the amount payable as an agricultural year's rent.

The arrear must be of rent and not of *sayar*, for the term rent does not include *sayar* for purposes of this chapter as it does for purposes of Chapter VII [*Vide* the definition of rent in section 3(18)]. Hence ejectment for arrears of *sayar* can be ordered by the Civil Court and not by the Revenue Court.<sup>1</sup>

If the tenant has paid up the amount before the date of the application, though belatedly, the application is not maintainable. Under section 61, Oudh Rent Act, it was held that a landholder who had received the arrears of rent decreed in a suit could not proceed after such receipt to eject the tenant.<sup>2</sup> The decision in *Indra Bahadur Singh v. Ajit Prasad Singh*,<sup>3</sup> and in *Sheoraj v. Pratab Bahadur Singh*<sup>4</sup> under section 52 of the Oudh Rent Act will not apply to cases under this section. There, the Court directed that an order for ejectment be passed but if the tenant paid up the arrear by a given date the order would stand cancelled, and the tenant paid but after the given date, and it was held that date fixed by the decree could not be extended and ejectment must take place. If these cases be still held to apply, what would happen to the money paid by the tenant? Will the landholder be allowed to keep it? The law provides no remedy to the tenant to recover it.

3. Under subsection (3), the notice shall require the tenant to appear within 15 days of the date of service, the appearance being either to admit the claim or to contest it.

The notice must be clearly and explicitly worded.<sup>5</sup> It should state that the 15 days are to run from the date of service,<sup>6</sup> and the period of fifteen days cannot be cut down.<sup>7</sup>

4. Sub-section (4).—The sub section says what the Tahsildar has to do. Either (i) the tenant appears and admits the claim or (ii) he does not appear in spite of service of the notice. In the latter case the Tahsildar before he passes an order under the subsection must be satisfied that the tenant was served. If, in fact, he was not served, his right to apply under the proviso arises. That right also arises when he was served but had sufficient cause for non-appearance on the date fixed.

As to what will be deemed to be sufficient cause will be for the Tahsildar to decide as a question of fact. Illness of a sufficiently serious nature will be a sufficient cause. So previous payment of the rent due.<sup>8</sup>

<sup>1</sup> *Ram Chander Singh v. Sri Thakur Gopal Lalji*, 1938 R. D. 371.

<sup>2</sup> *Hari Krishan Das v. Badal Singh*, XX U. D. 8=1938 R. D. 758.

<sup>3</sup> XX U. D. 12=1938 R. D. 761 B.

<sup>4</sup> IV U. D. 371=5 R. D. 125.

<sup>5</sup> *Janaki v. Maharaja of Benares*, II U. D. 72.

<sup>6</sup> *Bakhtawar Khan v. Niazulnissa*, I U. D. 85.

<sup>7</sup> *Kabul v. Futeh Chand*, XIV U. D. 472=14 L. R. Rev. 367.

<sup>8</sup> *Wazir-un-nissa v. Amir Husain Khan*, XIII U. D. 151=14 L. R. Rev. 58 ;  
*Mahant Singh v. Lal Bahadur Singh*, II U. D. 418.

Where, to the knowledge of the landholder, a tenant had made arrangement for the payment of his dues, and then had to go away on military service, it was held to be sufficient cause.<sup>1</sup>

Often, a tenant came immediately after the passing of orders, either with the cash in hand, or with or without some cash in hand with a prayer for further time. When he came with the full amount of the claim, his application to set aside the *ex-parte* order if in time was as a rule accepted.<sup>2</sup> Service on a dato which would not give sufficient time to appear would be a sufficient cause.

Can the Tahsildar extend the time for payment in such a case?

A tenant may appear (and pay) on an adjourned dato before the case is actually taken up, to avoid an order under subsection (4).<sup>3</sup>

An order under subsection (4) should not be passed before the expiration of 15 days,<sup>4</sup> nor against a minor whose guardian has not been properly served.<sup>5</sup>

The proviso to subsection (4) leaves open the door for some prolongation of the proceedings. The tenant has to prove non-service of the notice under subsection (1), or that he had sufficient cause for non-appearance, as he could do under the Act of 1926.

If the Tahsildar is satisfied that the notice was not served or as to the sufficiency of the cause alleged, he is to proceed with the hearing of the case in the manner hereinafter provided. Perhaps the procedure indicated in subsection (5) is meant to be followed.

The kind of order which the Tahsildar will have to pass should be noted, viz. (i) to pay into Court the amount claimed, together with interest and cost of notice, and (ii) to pay as it falls due the rent payable by him in the agricultural year in which the application is made.

**5. Sub-section (5)**—Applies when the tenant appears and contests the claim or pleads that his does not belong to the class of tenants covered by this section.

In such a case, the Tahsildar has to direct the tenant to pay into Court, as it falls due, the rent payable by him for the holding between the date of his order and the 31st of May next following the passing of final orders in the suit presently referred to. This will ensure to the landholder the due payment of rent during the period of contest. Note the difference between an order under subsection (4) and one under this subsection.

On an order or direction under sub-section (5) being given, the application under sub-section (1) for issue of notice will become a suit

<sup>1</sup> *Pirano v. Munshi Singh*, 11 L. R. Rev. 228=14 R. D. 501.

<sup>2</sup> *Gopi Nath v. Hasan Ali*, XVIII U. D. 18.

<sup>3</sup> See *Ghasi Ram v. Pirama*, XVIII U. D. 4=1938 R. D. 3.

<sup>4</sup> See *Jaisi Ram v. Nathu Mal*, I U. D. 241=32 I. C. 755.

<sup>5</sup> See *Pohap Singh v. Ganeshi*, VI U. D. 131=5 L. R. Rev. 154=9 R. D. 256.

for arrears of rent, if the proper court-fee is paid by the landholder. Such suit is in Schedule IV, Group A, No. 6 and pays court-fee as in the Court-Fees Act. If the fee is not paid the application will be dismissed. If the amount of the claim does not exceed Rs. 200, the Tahsildar will try it, unless the class to which the tenant belongs is in issue in which case and also in a case where the amount of the claim exceeds Rs. 200, he has to forward the case to the Assistant Collector in charge of the subdivision, as he is not empowered to decide the case in such event.<sup>1</sup>

6. **Contests the claim.**—As a dispute about the class is specially provided for, the expression must mean that the contest should be about the amount due, and probably about the fact that the relation of landholder and tenant does not exist between the parties. Where a tenant served with a notice under section 81 of the Act of 1926 refused to pay and desired to be ejected, and a mortgagee from before 1902 offered to pay, but the landholder contested his right, the proceedings were held to have become contested, and therefore to be dealt with as a suit with the mortgagee as a party, the tenant's request to be ejected being taken to be a surrender within section 32 (2) of that Act (section 47 of the present Act).<sup>2</sup>

*Sed qu.* Whether this is right now ?

Where a decree for arrears of rent has been passed under section 148, the amount decreed as rent will be the amount of the claim, unless subsequent satisfaction of the decree, whole or partial, is pleaded. Such satisfaction must comply with Order 21, rule 2, C. P. C. and be certified or it will not be taken notice of,<sup>3</sup> and no other evidence as to such satisfaction is admissible,<sup>4</sup> but if the plea of satisfaction is taken within the period of limitation for such certification, the court is bound to enquire into it and if it finds the plea made good, it should act accordingly.<sup>5</sup> If the decree is found to have been fully satisfied, the order under sub-section (4) should be cancelled, and if it is not cancelled by mistake, that may be done in review, revision or appeal.<sup>6</sup> A tenant with a decree for arrears against him may tender the amount during the pendency of an application under sub-section (4).<sup>7</sup>

Under section 79 of the Act of 1926, it was held that the amount due under the decree did not include costs of the application,<sup>8</sup> or interest after decree and costs.<sup>9</sup>

<sup>1</sup> See *Ajudhia Prasad v. Surji*, XVIII U. D. 344=1936 R. D. -66.

<sup>2</sup> *Ramanuj Prasad v. Mundoo*, XI U. D. 123=14 R. D. 447.

<sup>3</sup> *Sujan v. Fateh Shah Singh*, B. R. 3 of 1923=V U. D. C. XXV=4 L. R. Rev. 261; *Rudhey Lal v. Gur Dayal Singh*, II U. D. 319=3 R. D. 23, but see *Debi Prasad v. Mahipal*, XII U. D. 318.

<sup>4</sup> *Bhagwan Das v. Gulob Singh*, XV U. D. 27=14 L. R. Rev. 869.

<sup>5</sup> See *Mahanandan Singh v. Lal Bahadur Singh*, II U. D. 418.

<sup>6</sup> See *Khub Singh v. Amar Singh*, B. R. 19 of 1884.

<sup>7</sup> See *Ram Adhin v. Mahabir*, I U. D. 183; *Munna Lal v. Bahadur Singh*, XV U. D. 191.

<sup>8</sup> *Harnam Dayal v. Jabbu*, II U. D. 156=3 R. D. 60; *Moti Singh v. Chandika Prasad*, II U. D. 3=4 R. D. 475; *Newal v. Bhola Nath*, XIX U. D. 158=1938 R. D. 395.

<sup>9</sup> *Parshadi v. Ramjas Mal*, V U. D. 89=7 R. D. 148.



Part payment of decree will not stay the hand of the Court to act under sub-section (4)<sup>1</sup>.

A tenant judgment-debtor has until midnight of the last day of the period to pay, and an order under sub-section (4) on the last day may be cancelled on review.<sup>2</sup>

7. **Sub-section (6).**—The court has no option but to pass a decree directing the tenant to pay such amount into court, if it finds the amount due. To come to this conclusion it will take into account payments made before the issue of notice under sub-section (1), certified payments, and payments subsequent to the notice and up to the date of the order.

8. **Sub-section (7)** ensures the payment of future instalments of rent while the case is *sub judice*.

9. **Sub-section (8)** prohibits an appeal against orders regarding the payment of instalments passed by the tahsildar

10. **Sub-section (9)** provides for amendment of the application under sub-section (1) before the date mentioned.

11. Rules made by the Board of Revenue to give effect to this section and to certain other sections relating to ejectment are given below for easy reference. (See Notification No. 1318 Judicial (Ex.)-837-B, dated July 9, 1940 published in the United Provinces Gazette dated 13th July 1904). There are rules Nos. 74 to 77 of the United Provinces Tenancy (Board of Revenue) Rules, 1940. The forms of notice are also given.

### Rules to give effect to sections 163, 168, 169, 170, 175 and 176 of the Act

#### *Notice of ejectment to tenants.*

74. An application made to the *tahsildar* under section 163 or 169 of the Act shall contain the following particulars :—

- (a) the name, parentage, caste and place of residence of the landholder ;
- (b) the name, parentage, caste and place of residence of the tenant ;
- (c) the character in which the applicant claims to eject the tenant, *e.g.* whether as the sole proprietor of the land held by the tenant, or as *lambardar*, or as a co-sharer authorised to receive from the tenant the whole of the rent payable by him, or as a tenant who has sublet the land from which ejectment is sought, or in any other character ;

<sup>1</sup> See *Salig Ram v. Ram Dayal*, B. R. 11 of 1892=13 A. W. N. 9 ; *Surja v. Panna Lal*, XVII U. D. 249=1937 R. D. 374.

<sup>2</sup> See *Durga Prasad v. Chhangan Lal*, XVIII U. D. 236 ; *Durga v. Charan Singh*, XIX U. D. 124=1938 R. D. 301.

- (d) the total amount of arrears of rent and interest claimed with a statement of account showing the arrears and interest claimed for each instalment in respect of which the application is filed ; and
- (e) the *khasra* numbers and area of each plot comprising the holding, together with the name of the *tahsil*, *pargana*, village, *mahal*, and if there are such divisions of the *mahal*, the *thok* or *patti* in which the holding is situated.

(2) An application under section 168 or 170 of the Act shall contain the particulars specified in clauses (c) and (e) of sub-rule (1), and shall also be accompanied by a copy of the decree.

(3) An application made to the *tahsildar* under section 175 of the Act shall contain, in addition to the particulars specified in clauses (a) to (c) and (e) of sub-rule (1), the ground on which ejectment is sought.

75. An application under sections 163, 168, 169, 170 or 175 of the Act shall be signed by the applicant in the same manner as a plaint.

76. (1) With the application under sections 163, 168, 169, 170 or 175 of the Act the applicant shall present as many duplicate copies of notice as there are tenants to be served with such notice, and shall also deposit the necessary process fee for the service of such notice.

(2) The form of notice to be used in an application under each of the sections mentioned in sub-rule (1) is noted below—

Application under section 163, Form J.

Application under section 168, Form K.

Application under section 169 or 170, Form L.

Application under section 175, Form M.

77. The court shall refuse to issue the notice if it does not comply with the term of the preceding rule, or if the necessary process fee is not paid.

#### FORM J

**Notice to an ex-proprietary, occupancy or hereditary tenant for the payment of arrears of rent or for ejectment in default.**

[See section 163 of the United Provinces Tenancy Act, 1939, and rule 76(2) of the United Provinces Tenancy (Board of Revenue) Rules, 1940]

IN THE COURT OF THE TAHSILDAR, TAHSIL \_\_\_\_\_,  
DISTRICT \_\_\_\_\_.

CASE No. \_\_\_\_\_ OF 19 \_\_\_\_.

AB (add description and residence) ... Applicant (landholder).  
versus

CD (add description and residence) ... Opposite-party (tenant).

To

(name, description and place of residence)\_\_\_\_\_ (tenant).

WHEREAS the person abovenamed, alleging himself to be your landholder, has applied to this court for the issue of a notice to you for the payment of arrears of rent and for your ejectment in case of default

AND WHEREAS the amount of Rs.....is claimed to be due from you to the said landholder on account of arrears of rent in respect of the holding specified below, notice is hereby given to you to appear within fifteen days of the date of service of this notice and either to admit the claim or to contest it. In default the application will be heard and determined in your absence.

The instalments of rent payable by you for the holding in the future are specified below :—

*Details of account.*

Year and instalment.	Rent payable	Rent paid.	Arrears	Interest	Remarks
1	2	3	4	5	6

Total

GRAND TOTAL

*Description of the Holding.*

Pargana.	Village.	Mahal.	Thok or Patti	Khasra numbers of field.	Area of Field.
1	2	3	4	5	6

Number of fields and total area.

*Rent payable for the holding in future.**Rabi instalment**Kharif instalment.*

Given under my hand and the seal of the Court this.....day  
of.....19 .

Seal of the  
Court.

(Signed)  
Tahsildar.

Dated.....

## FORM K

**Notice to an ex-proprietary, occupancy or hereditary tenant for payment of the amount outstanding under a decree for arrears of rent or for ejectment in default.**

[See section 168 of the United Provinces Tenancy Act, 1939, and rule 76(2) of the United Provinces Tenancy (Board of Revenue) Rules, 1940].

IN THE COURT OF.....AT.....

CASE No.....of 19 .

AB (add description and residence)

... Decree-holder  
(landholder).

versus

CD (add description and residence)

... Judgment-  
debtor (tenant).

To

(name, description and place of residence).....

WHEREAS the person abovenamed, alleging himself to be your landholder, has applied to this court, for the execution of a decree for arrears of rent by the issue of a notice to you for the payment of the amount outstanding or for ejectment in case of default,

AND WHEREAS the amount of Rs.....is claimed to be due from you to the said landholder on account of arrears of rent in respect of the holding specified below, and on account of costs as detailed below, notice is hereby given to you to appear within 30 days of the service of this notice and either show cause why you should not be ejected from the holding, or else admit the claim and obtain leave to pay the amount into the court within 120 days from the date of your appearance. In case of default an order may be passed for your ejectment from the holding specified below :—

*Details of account.*

Year and instalment.	Rent payable.	Rent paid.	Arrears.	Interest.	Costs awarded by the decree.	Remarks.
1	2	3	4	5	6	7
Total ...						
GRAND TOTAL						

*Description of the holding.*

<i>Pargana.</i>	<i>Village.</i>	<i>Mohal.</i>	<i>Thok or patti.</i>	<i>Khasra numbers of fields.</i>	<i>Areas of fields</i>
1	2	3	4	5	6

Number of fields and total area.

Given under my hand and the seal of the court this.....day  
of.....19 .

(Signed).....

Dated.....

Assistant Collector,.....class.

Seal of the Court.

## FORM I.

**Notice to a non-occupancy tenant for payment of arrears of  
rent or for ejectment in default.**

[See sections 169/170 of the United Provinces Tenancy Act,  
1939, and rule 76(2) of the United Provinces Tenancy  
(Board of Revenue Rules,; 1940].

IN-THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_

CASE No.....of 19 .

AB (add description and residence) ... *Applicant/deeree-  
holder (tenant),*

*versus*

CD (add description and residence) ... *Opposite party  
Judgment-debtor  
(tenant).*

To

(name, description and place of residence).....(tenant).

WHEREAS the person abovenamed, alleging himself to be your  
landholder, has applied to this court for the issue of a notice to you for  
the payment of arrears of rent and for your ejectment in case of default.

AND WHEREAS the amount of Rs.....is claimed to be due from you to the said landholder on account of arrears of rent in respect of the holding specified below, notice is hereby given to you to pay the said sum of Rs.....being the amount of arrears claimed to be due from you into this court (together with Rs .....as costs)\* within six weeks of the date of service of this notice, or, if you do not admit the liability, to appear in this court and contest the claim within fifteen days of the service of this notice. In default, an order may be passed for your ejection from the holding specified below :—

*Details of accounts.*

Year and instalment.	Rent payable.	Rent paid.	Arrears.	Interest	Costs awarded by the decree (applications under sections 170.	Remarks.
1	2	3	4	5	6	7
Total ...						
GRAND TOTAL						

*Description of the holding*

Pargana.	Village.	Mahal.	Thok or patti.	Khasra numbers of fields	Areas of fields.
1	2	3	4	5	6

Number of fields and total area.

Given under my hand and the seal of the court this..... day of.....19 .

(Signed).....

Dated.....

Assistant Collector,.....class.

Seal of the Court.

\* In applications under section 170 only.

## FORM M.

**Notice of ejectment of a non-occupancy tenant under section  
175 of the United Provinces Tenancy Act, 1939.**

[See rule 76 2) of the United Provinces Tenancy (Board of Revenue)  
Rules, 1940].

IN THE COURT OF THE TAHSILDAR.....(TAHSIL)  
.....(DISTRICT)

CASE No..... OF 19 .

*AB* (add description and residence).....*Applicant (landholder).*

To

(name description and place of residence).....(tenant).

WHEREAS the landholder abovenamed has applied under section 175 of the United Provinces Tenancy Act, 1939, on the grounds mentioned below for your ejectment from the holding specified below, this notice of ejectment is issued to you under section 177 of the said Act You are hereby informed—

(a) that if you desire to dispute ejectment, you must contest the notice within thirty days of its being served on you, and

(b) that if within thirty days of the service of the notice you appear and admit your liability to ejectment, you will not be liable for any costs.

Take notice that, in default of your appearance within the period specified above, an order of ejectment may be passed against you.

*Grounds of ejectment.*

1. ....
2. ....

*Description of the holding.*

<i>Pargana</i>	<i>Village.</i>	<i>Mahal.</i>	<i>Thok or patti.</i>	<i>Khasra numbers of fields.</i>	<i>Areas of fields.</i>	<i>Rent of the Holding.</i>
1	2	3	4	5	6	7

Number of fields and total area.

Given under my hand and the seal of the Court this.....day  
of.....19 .

(Signed).....

*Dated*.....

Seal of the Court

*Tahsildar,*

**164.** If in a case to which the provisions of sub-section (5) of section 163 apply, the court or any court passed in appeal from which passes orders in the suit in appeal, ejectment proceedings reference or revision finds either that the tenant is not an ex-proprietary, an occupancy or a hereditary tenant or that no part of the arrear specified in the notice was due by the tenant as arrears of rent on the date on which the application was made under the provisions of sub-section (1) of section 163, it shall dismiss the suit and cancel with effect from the date of such dismissal the order of the tahsildar passed under the provisions of that section directing the tenant to pay into court the instalments of rent.

1. The section is new and comes into play when the tenant appears in answer to a notice under section 163(1) and contests the claim or denies that he belongs to one of the three classes mentioned in that section.

2. **No part of the arrear etc.**—An order of dismissal of the suit will be justified only when no part of the arrear specified in the notice was due on the date of the application under section 163(1). A court of appeal reference or revision cannot accede to a prayer of the tenant to make the deposit <sup>1</sup>

3. **And cancel etc.**—Cancellation of the order under section 163 directing the tenant to pay the instalments of rent is a necessary part of the Court's order. It is noteworthy that the cancellation takes effect not from the date of the order cancelled but from the date of the dismissal of the suit.

**165.** (1) If during the currency of an order passed by the tahsildar under the provisions of section 163 directing the tenant to pay into court the instalments of rent the tenant fails by the thirty-first day of May in any agricultural year so to pay the instalment which fell due in that agricultural year with interest thereon, the tahsildar shall forthwith order that he be ejected from his holding and he shall forthwith be ejected accordingly.

(2) If the tenant fails to pay into court the amount of the arrear as ordered by the tahsildar under the provisions of sub-section (4) of section 163 or as decreed by the court under the provisions of sub-section (6) of that section together with interest thereon and the cost of the application or the costs, if any, awarded to the landholder by the decree, as the case may be, by the thirty-first of May next following the expiry of a period of one year from the date of the passing of such order or of the decree becoming final, as the case may be, the tahsildar shall

<sup>1</sup> See *Ranchhor Singh v. Bir Sahai*, XVIII U. D. 43—1937 R. D. 24.



forthwith order that the tenant be ejected from his holding and he shall forthwith be ejected accordingly.

(3) If on any date before an order of ejectment is passed under the provisions of this section the tenant pays into court the amount of the arrear which he was ordered to pay under the provisions of sub-section (4) of section 163 or which was decreed under the provisions of sub-section (6) of that section together with interest thereon and the costs of the application or the costs, if any, awarded to the landholder under the decree, as the case may be, and also the instalments of rent that have fallen due by such date or the balance thereof, the court shall forthwith cancel its order directing the tenant to pay into court the instalments of rent as they fall due.

(4) Notwithstanding anything in this section the tenant shall not be ejected for failure to pay any portion of his rent which has been remitted or suspended under the provisions of section 123.

This is new.

1. **Sub-section (1)** enjoins the Tahsildar to order ejectment from the holding, when the tenant has not paid before or on the last day of May next following the date of the tahsildar's order under section 163 the amount which he was directed to pay by such order and also any interest which has accrued.

2 **Sub-section (2).**—To avoid a compulsory order of ejectment from the holding by the Tahsildar, the tenant must have paid (a) the amount of the arrear as ordered by the Tahsildar under subsection (4) of section 163 or the amount of the decree under sub-section (6) of that section as directed therein, (b) all rent payable by him in respect of the holding between the date of the Tahsildar's order under section 163 and the thirty-first of May next following the order, and (c) interest which has accrued thereon and costs, such payment being on or before the last mentioned date. In case of failure in such payment the Tahsildar has no option but to direct the tenant's ejectment from the holding.

3 **Sub-section (4).** No ejectment can be ordered for failure to pay any portion of rent which has been remitted or suspended under the provisions of section 123, even though an order for payment or a decree may have been passed with respect to that under section 163.

**166. (1)** Notwithstanding anything in section 159 if the tenant appears in accordance with a notice served under the provisions of section 163 he shall be asked whether he makes any claim for compensation on account of improvements in case an order of ejectment is passed against him and if he makes such claim the tahsildar shall forward the case for decision to the assistant collector in charge of the sub-division.

Tenant's claim for compensation on appearance.

(2) No claim for compensation on account of improvements shall be entertained unless it is made in accordance with the provisions of this section, provided that if the tenant appears after the expiry of the period specified in the notice and satisfies the Tahsildar either that the notice was not served on him or that he had sufficient cause for non-appearance within such time, the Tahsildar shall entertain any claim made by him for compensation.

This is new. *Cf.* section 116 of the Agra Act of 1926.

The Tahsildar has to enquire whether the tenant makes a claim for compensation. If he does make a claim the case will go to the Assistant Collector in charge of the sub-division for disposal. If he does not, he will lose all rights to compensation, unless he takes steps under the proviso to sub-section (2).

**167.** (1) Except as provided in sub-section (5) and sub-section (8) of section 163 no suit for arrears of rent shall lie in respect of an arrear specified in a notice issued under the provisions of section 163 or in respect of any instalment of rent payable into court under the provisions of that section.

(2) No application shall be made under the provisions of section 163 in respect of an arrear for the recovery of which a suit has been instituted under the provisions of section 144 or section 148.

This is new.

The bar to suits and applications for arrears of rent should be noted. A suit is barred in respect of an arrear specified in a notice under section 163, or in respect of an amount payable into court under the provisions of that section. Sub-section (2) is a useful provision against two proceedings for one and the same arrear of rent.

**168.** (1) When a decree for arrears of rent against an Ejectment of certain tenants in execution of a decree for arrears. proprietary, an occupancy or hereditary tenant has not been completely satisfied within one year from the date of such decree by any mode of execution other than sale of holdings, the landholder may apply to the court, which passed the decree, for the issue of a notice to the tenant for payment of the amount outstanding and for his ejectment in case of the default and the court shall thereupon issue such notice.

(2) The notice shall require the tenant to appear within thirty days of the service of the notice and either to show cause why he should not be ejected from the holding or to admit the claim and obtain leave to pay the amount into the court within one hundred and twenty days from the date of his appearance in the court.

**169. (1)** When the rent of a non-occupancy tenant is in arrears, the landholder may apply to the tahsildar for the issue of a notice to such tenant for payment of the arrears and for his ejectment in case of default, and the tahsildar shall thereupon issue such notice.

Application for issue of notice to non-occupancy tenant for payment of arrears or for ejectment in default.

(2) The notice shall require the tenant either to contest the claim within fifteen days of the service of notice, or to pay the arrear into the court within six weeks of the service of the notice, and shall state that if he fails to comply with the terms of the notice an order of ejectment will be passed.

(3) If the tenant does not contest the claim and does not within six weeks of the service of the notice or within such time as may be allowed under the provisions of sub-section (4) pay the amount into court or the payment thereof is not certified under Order XXI, rule 2 of the Code of Civil Procedure, 1908, the court shall forthwith pass an order that he be ejected.

(4) The tahsildar may from time to time for reasons to be recorded extend the time for payment, provided that the total period allowed for payment shall not exceed six months.

(5) If the tenant contests the claim, the application for issue of notice shall, on payment of the court-fee as in a suit for arrears of rent, be deemed to be a suit for arrears of rent. If the tahsildar is not competent to try the suit, he shall forward it to the assistant collector in charge of the sub-division.

1. This section is new, though based on section 81 of the Act of 1926, but it corresponds to section 163 of this Act remodelled to suit the case of non-occupancy tenants. It corresponds somewhat to section 61, Oudh Act. The remarks made under section 163 will prove useful. See also note 1 to section 168 at page 484.

2. The notice will be for ejectment in case of default from the entire holding. It will direct the tenant to contest the claim within 15 days, as under section 163 (3), or pay the arrear into court within six weeks of the service of the notice. Failing either of these he must be ejected. If the tenant contests the claim the application for the issue of the notice will, on payment of the proper court-fee, be treated as the plaint in a suit for arrears of rent, and the tahsildar will try it himself, if competent, or send it to the Assistant Collector in charge of the sub-division as under section 163(5). If the tenant does not contest the claim, and does not pay the arrear the Tahsildar will wait for the expiry of six weeks from the date of the service of the notice and then order ejectment, but he cannot order ejectment if the amount of the arrear has been paid in full within the period mentioned in the notice and he has the power to extend such time for payment from time to time. The total period allowed for payment must not exceed six months. Does this period of six months include the period fixed in the notice? Reason for each extension of time has to be recorded. The landholder

could claim the full amount of arrears as he could in a suit for arrears.<sup>1</sup> This section does not confine, as section 163 does, the claim to any particular period for which rents are in arrears, and the ruling cited above will apply.

Reading this section with section 170, it is obvious that "arrears of rent" in this section does not include an arrear of rent for which a decree has been passed.

**3. Pay up or contest.**—Sub-section (2) shows that the contest is confined to liability to pay rent or the amount demanded. If there is no contest and no payment, ejectment has to be ordered (sub-section 3). Sub-section (4) empowers extension of time for payment<sup>2</sup>. Does it mean that time to contest cannot be extended?

The case of a tenant who does not appear is not expressly provided for but it comes under sub-section (3). His ejectment has to be ordered, subject of course, to his right to apply for extensions of time under sub-section (4).

Where the tenant served with notice refused to pay and desired to be ejected and his mortgagee from before 1902 offered to pay, and the landholder contested his right, the proceedings become contested and should be dealt with as a suit with the mortgagee as a party<sup>3</sup>. This shows that tenant in sub-section (3) includes a person entitled to the benefit of section 47(2).

Where a tenant contests the landholder's claim, the application under this section becomes a plaint on proper court-fees being paid, and Order 2, rule 2, C. P. C. applies.<sup>3</sup>

**4. Sub-section (4)** Where two adjournments had been granted and on the last occasion, which was within the statutory period under section 81 (4) (b) of the Act of 1926, ejectment was ordered as no one appeared, and the tenants applied for review of the order it was held that the review could not be entertained and the order of ejectment could not be cancelled.<sup>4</sup>

Under the Act of 1926 the landholder could consent to extension beyond the statutory period,<sup>5</sup> but the present section 169 gives him no such option.

**5. Sub-section (5).**—A true conception of the exact position may be had if we consider the nature of the order to be passed under this sub-section. On contest, the application is to be deemed a suit for arrears of rent, and, presumably, the only order or decree that can be passed under the sub-section is one determining the amount, if any, of arrears. This

<sup>1</sup> *Bhika v. Prag Das*, XV U. D. 72

<sup>2</sup> *Ramanuj Prasad v. Mundoo*, XI U. D. 132=14 R. D. 447.

<sup>3</sup> *Thakurji Maharaj v. Risal*, 1930 A. I. R. All. 527=124 I. C. 177=14 R. D. 487.

<sup>4</sup> *Hur Saran D. s v. Nathu*, XIX U. D. 139=1938 R. D. 341

<sup>5</sup> See *Barkat Ali v. Shao Singh*, X U. D. 28=10 L. R. Rev. 47=13 R. D. 206.

may be on proof or admission. The sub-section distinctly does not authorise a decree for ejectment.<sup>1</sup>

If any one of several co-tenants contests, the suit must be tried against all the co-tenants, including those who did not contest.<sup>2</sup>

Where the Tahsildar accepts an application by the tenant who alleged payment or offer of it, he must, if the amount of arrears exceeded, Rs 200 proceed under sub-section (5), and send the case to the S. D. O. for decision and not decide it himself, as the tenant's application means that he intends to contest the claim.<sup>3</sup>

A notice under section 169 dismissed for default does not bar a suit under section 148, as the previous application never became converted into a suit under sub-section (5).<sup>4</sup>

6. Section 61 of the Outh Act applied only to statutory tenants and to tenants who had no right of occupancy or who did not hold under a special agreement or decree of court (on its phraseology section 61 did not apply to tenants with rights of occupancy<sup>5</sup>, but the principle underlying it and section 169 of this Act is the same and the language used is very similar. Hence the decisions thereunder are cited for guidance in the interpretation and application of these sections. It must be kept in mind that section 61 provided for a suit for ejectment when arrears of rent were due, whether or not the landholder had obtained a decree for arrears of rent. In such a suit, the decree had to specify the amount of the arrear and the interest, if any due thereon, and ejectment was not allowed if that amount and the costs were paid within six weeks of the decree, and this time could be extended by the court.

Rent must have been agreed upon or fixed by competent authority. Where no rent was even paid or determined, a suit for arrears of rent and for ejectment in default was not maintainable.<sup>6</sup>

The landlord could claim the full amount of arrears due to him as he could in a suit for arrears of rent.<sup>7</sup>

As the Court had to specify the amount of arrears and interest thereon, the court, in a case to which the section applied, and the non-occupancy tenant held also some other tenancy or under-proprietary tenure, *e. g.*, *shankalap*, had to separate the two kinds of land and to apportion the rent for the non-occupancy land and order ejectment therefrom.<sup>8</sup>

<sup>1</sup> Adopted in *Nepal v. Bukramajit Singh*, B R. 5 of 1928=X U. D (B R) 12=10 L. R. Rev. 123=13 R. D. 102; *Durga Prasad v. Durga*, XI U. D. 102; *Bachcha Lal v. Brij Lal*, XI U. D. 102=14 R. D. 390.

<sup>2</sup> *Balram v. Ram Lakhan Das*, 11 L. R. Rev. 61=XI U. D 42=14 R. D 155.

<sup>3</sup> *Ajodhia Prasad v. Surji*, XVII U. D. 344=1936 R. D. 464

<sup>4</sup> *Ram Lal v. Pyare Lal*, X U. D. 186=13 R. D. 699. See also *Hannuman Prasad v. Gaya Prasad*, 1941 R. D. 379.

<sup>5</sup> *Muhammad Ashgar Ali v. Nawab Ali* XII U. D. 446.

<sup>6</sup> *Ganga Sahai v. Dwarka Singh*, VI U. D. 235

<sup>7</sup> *Bhika v. Prag Das*, XV U. D. 72

<sup>8</sup> *Ram Sukh v. Ramhit*, XVIII U. D. 116=1937 R. D. 134. See also *Tirbhuvan Bahadur Singh v. Ram Ratan*, XVIII U. D. 115=1937 R. D. 133.

The court had to specify the interest due.<sup>1</sup>

Where the landlord had concealed the true rent and had recorded a lower rent, and the tenant had paid the latter, he could not sue for ejectment in respect of the concealed portion.<sup>2</sup>

Where the tenant pleaded occupancy rights or that he held at a favourable rate of rent, the court had to adjudicate on the matter before passing a decree under the section.<sup>3</sup>

The tenant had to pay within the time fixed, unless it was extended by the trial or the appellate court when hearing the appeal in the suit. The appellate court could not extend the time when hearing an appeal from a decree in a suit by the tenant against the landlord on the ground of illegal dispossession.<sup>4</sup>

If the tenant who had not paid into court pleaded offer of the decretal amount to the landlord outside the court and the landlord's refusal to receive it, the court was not concerned with the plea and could eject the tenant.<sup>5</sup>

Once a decree under section 61 for ejectment had become absolute the court could not extend the time.<sup>6</sup>

The court-fee payable on a plaint under section 61 for ejectment on account of an outstanding decree for arrears for three years was on one year's rent.<sup>7</sup>

A suit for ejectment under section 61 was considered a step in aid of execution of the rent decree under Art 182 (5), Limitation Act.<sup>8</sup>

7. The application is No. 6 of Group C of the Fourth Schedule. The limitation is 3 years from the time when the arrears become due. Court-fee is payable as prescribed by the Court-Fees Act.

8. For rules made by the Board of Revenue to give effect to this section see under notes to section 163 at pages 474-75 and Form L at pages 478-79 *supra*.

**170. (1)** When a decree is passed for arrears of rent

Ejectment of non-occupancy tenant in execution of a decree for arrears of rent.

against a non-occupancy tenant the landholder may, in addition to any other mode of execution, apply to the court which passed the decree for the issue of a notice to

<sup>1</sup> *Khurshed-un-nissa v. Hem Raj*, XVIII U. D. 350—1937 R. D. 564.

<sup>2</sup> *Inder Kuar v. Bansidhar*, XIV U. D. 408—14 L. R. Rev. 815—15 L. R. Rev. 387.

<sup>3</sup> *Babu Lal v. Tirbhuwan Bahadur Singh*, XIV U. D. 525—14 L. R. Rev. 892.

<sup>4</sup> *Jhaoo Lal v. Bhola Singh*, XV U. D. 247.

<sup>5</sup> *Kanhaya Lal v. Kundan Lal*, XV U. D. 251.

<sup>6</sup> *Rajendra Singh v. Sunder*, XVII U. D. 275—1936 R. D. 489.

<sup>7</sup> *Bhawani v. Secretary of State*, XVI U. D. 20.

<sup>8</sup> *Rudra Narain v. Maharaja of Kapurthala*, XVII U. D. (H. C.) 50—1936 R. D. 72—1936 O. W. N. 134—160 L. C. 465.

the tenant for payment of the amount and for his ejectment in case of default ; and the court shall thereupon issue such notice.

(2) The notice shall require the tenant either to show cause within fifteen days of the service of the notice why he should not be ejected or to pay the amount into court within six weeks of the date of the service of the notice.

(3) If the tenant appears and claims that he is not liable to ejectment, the court shall, after inquiry, decide such claim, and, if it rejects it, shall order that the tenant be ejected forthwith.

(4) If the tenant does not claim that he is not liable to ejectment and does not, within six weeks of the service of the notice or within such time as may be allowed under the provisions of sub-section (5), pay the amount into court or the payment thereof is not certified to the court under Order XXI, rule 2 of the Code of Civil Procedure, 1908, the court shall forthwith pass an order that he be ejected.

(5) The court may from time to time for reasons to be recorded extend the time for payment provided that in no case shall the total period allowed for payment exceed six months.

1. The section is new as it stands but corresponds to sections 79 and 80 of the Agra Act of 1926 and section 61 of the Oudh Act.

Remarks under section 61 of the Oudh Act have already been made in note 6 to section 169 at pages 488-89 above. Section 52 of that Act did not apply to non-occupancy tenants, but the decisions under sub-sections (2) of that section which related to ejectment for an outstanding decree for arrears of rent may prove useful.

Under section 61 it was held that a court hearing an appeal from an order of ejectment could extend the time for payment, but if did not, it could not do so when hearing an appeal against a subsequent decree in a suit by the tenant against his landlord under section 183.<sup>1</sup>

2. In Oudh, an occupancy tenant or a tenant holding under a special agreement or decree of court could be ejected only in execution of a decree for ejectment, and a decree for ejectment could be passed on the ground that at the date of the decree for ejectment a decree for an arrear of rent in respect of the land had remained unsatisfied for 15 days or upwards, and a decree for the ejectment of a tenant holding under a special agreement or decree of court could be passed on such grounds as would have justified ejectment under the agreement or decree. (Section 52, Oudh Act). A tenant who had become an occupancy tenant could not be ejected under section 52 (2) Oudh Act for nonpayment of arrears of rent and decrees passed against him as statutory tenant.<sup>2</sup>

<sup>1</sup> *Jhau Lal v. Bhola Singh*, XV U. D. 247.

<sup>2</sup> *Dep. Com. v. Balwant Singh*, XV U. D. 24—14 L. R. Rev. 886.

Even if the decree had remained unsatisfied for 15 days the court had discretion to eject or not to eject according to circumstances.<sup>1</sup>

A tenant could be ejected only for failure to satisfy a decree for arrears.<sup>2</sup>

3. **Decree.**—The section does not apply to mere claims ; it applies only when a decree for arrears of rent has been passed.<sup>3</sup>

The decree may be for the arrears of any agricultural year, provided it has not been satisfied and must be unsatisfied, and may have been passed before the Act.<sup>4</sup>

The decree must be that of a revenue court, and not one of a civil court against the legal representative of a deceased tenant.<sup>5</sup>

An *ex parte* decree for rent obtained by fraud, *e. g.*, against a deceased pleaded as alive, and a lunatic under his wife's custody, there being no other eligible guardian, is a voidable decree and a civil suit may be brought for cancelling it and also the proceedings for ejectment on account of an outstanding decree for arrears.<sup>6</sup>

Where a third person intervened claiming the status of a co-tenant and also filed a declaratory suit to that effect but withdrew it, the withdrawal was, in the absence of explanation, taken to be evidence that he was not a co-tenant, and it was held that the person against whom the decree for rent was passed could be ejected.<sup>7</sup>

A son or heir is liable to be ejected under a decree for arrears against his father or other predecessor-in-interest.<sup>8</sup>

4. **The landholder.**—See section 3 (11) for meaning. He is the person entitled to apply under this section.

He will be the decree-holder or the person to whom the interest in land and the decree have come by assignment,<sup>9</sup> devolution or operation of law.

Though the landholder decree-holder has been declared an insolvent, he may eject in execution of his decree for arrears of rent.<sup>10</sup>

<sup>1</sup> *Bishambhar Nath v. Bindeshri Prasad*, XVI U. D. 688—1935 R. D. 555.

<sup>2</sup> *Sheo Shankar v. Sita Ram*, XVII U. D. 214—1936 R. D. 260.

<sup>3</sup> *Kundan Singh v. Karan Singh*, B. R. 6 of 1921—8 R. and Cr. L. J. 17—3 L. R. Rev. 345 ; *Kuber Singh v. Ram Din*, 45 All. 5—20 A. L. J. 769—1923 A. I. R. All. 14—V U. D. (H. C.) 85—1922 R. C 335—8 R. Cr. L. J. 269—77 I. C 927—5 R. D. 185.

<sup>4</sup> *Malik Baqar Husain v. Malik Muhammad Yusuf*, XII U. D 155—11 L. R. Rev. 374—15 R. D. 27.

<sup>5</sup> *Kali Charan v. Jwala Prasad*, B. R. 4 of 1889.

<sup>6</sup> *Jivan Singh v. Reoti Singh*, XI U D. (H. C.) 165—11 L. R. Rev. 121—14 R. D. 287.

<sup>7</sup> *Bindra Ban Das v. Ram Nath*, XI U, D 174—11 L. R. Rev. 201.

<sup>8</sup> *Mahabir Prasad v. Lala Din*, B. R. 1 of 1901 dissenting from *Narain v. Sakina*, B. R. 6 of 1896.

<sup>9</sup> *Prag Singh v. Prasad Singh*, B. R. 1 of 1887.

<sup>10</sup> *Kashi Nath v. Murta*, XIX U. D. (H. C.) 35—1938 R. D. 297.



In a proceeding under this section, the mortgagee of the tenant is not a necessary party.<sup>1</sup> The joining of a mortgagee in a suit for arrears of rent or describing him as mortgagee does not estop the landholder from ejecting the mortgagee after the tenant has been ejected under section 170.<sup>2</sup>

**5. May apply for issue of notice.**—The application should be to issue a notice to pay the amount outstanding, intimating that the tenant would be ejected in case of default.

The expression “any other mode of execution” shows that the section places ejectment also as a mode of execution and hence an application under this section is one in execution of a decree.

Under the Rent Act (of 1881) an application to eject on account of a decree for arrears of rent was not one in execution thereof, but was an independent application, the ground for making which was the existence of the unsatisfied decree.<sup>3</sup> Section 79 of the Act 1926 expressly enacted that the landholder could apply to execute the decree. And in Group F, No. 2 of the Fourth Schedule the period of limitation for making the application was 3 years from the date of the final decree in the case, as it is now under No. 4 of Group F of the 4th Schedule. Hence, one may plausibly infer that such an application is now put on the same footing as one for execution of a decree, although strictly speaking it is not so, for a decree for arrears is not one for ejectment. That being the case, the part of the decision in B. R. 11 of 1892 that the landholder cannot join to such an application a prayer for satisfaction of his decree by attachment of the tenant's property is no longer law. The Board had held that an application under section 59 of the Act of 1901 was not an application for execution of a decree, and was not a step in aid of execution of a decree and did not give a new starting point for counting the period of limitation.<sup>4</sup> The decision in *Fagira v. Parduman*<sup>5</sup> that an application under section 79 was essentially different from an application for execution of a decree the former not being a step in aid of execution and section 47 C. P. C. did not apply to it so as to make the order appealable to the District Judge and not to the Commissioner, may be right, but the Board did not consider the difference in the language of section 59 of the Act of 1901 and section 79 of the Act of 1926. In section 59 the words were “he shall apply in the same manner as for execution of the decree to the court empowered at the time to execute the same,” and section 79 enacted “that a decree for arrears of rent may, in addition to any other mode of execution, be executed by ejectment of the tenant”. The two provisions do not appear to be identical. A comparison of items 4 and 5 of Group F of the Fourth Schedule of the present Act shows however that an application

<sup>1</sup> *Ram Subhag Singh v. Kesho Prasad Singh*, VI U. D. 168—5 L. R. Rev. 214.

<sup>2</sup> *Ram Subhag Singh v. Kesho Prasad Singh*, VI U. D. 168.

<sup>3</sup> See *Bu Ali v. Adham*, R. R. 2 of 1891, per Reid, Member, in *Salig Ram v. Ram Dayal*, B. R. 11 of 1892.

<sup>4</sup> *Kesho Prasad Singh v. Baiju Rai*, B. R. 9 of 1912.

<sup>5</sup> VIII U. D. 139—8 L. R. Rev. 358—1927 R. C. 416—12 R. D. 323.

under section 170 is not an application for execution of a decree which is exclusively dealt with in item No. 5. Hence it is possible to say that the rule laid down in B. R. 9 of 1912 is still good law.

The case was followed in *Malkhan Singh v. Makhan Lal*.<sup>1</sup> The history of the case however followed a curious course. In the case, the Assistant Collector, because of the failure of the judgment-debtor to pay or show cause as regards the notice under section 80, ordered his ejectment. Very soon after the debtor appeared with the money with an excuse for non-appearance at the proper time and applied for review or cancellation of the order of ejectment. This was rejected and the landholder was put in possession. The tenant went up in revision to the Board and there a preliminary objection that an appeal lay to the District Judge was overruled, the order rejecting the application for review was set aside and the order for ejectment was also cancelled. Thereupon, the landholder brought a civil suit for a declaration that the decision of the Board of Revenue was without jurisdiction, and subsequently also added a prayer that possession may be restored to him as under the Board's decree the Assistant Collector had put the defendant back in possession after the institution of the suit. The High Court held that an application under section 79 of the Act of 1926 was one in execution of a decree from an order in which an appeal would lie to the District Judge but the Board had jurisdiction to revise the order rejecting the tenant's application for review, and having accepted the revision, the duty of the Board was to send the application for review back to the Assistant Collector and not to anticipate his decision by cancelling the order of ejectment.<sup>2</sup> The High Court referred certain issues to the Assistant Collector under section 273 of the Act of 1926. No one seems to have questioned the competency of the Civil Court to entertain a suit to cancel the order of an independent tribunal like the Board of Revenue.

6. **To the court which passed the decree.**—And to no other court. See section 37, Civil Procedure Code, for meaning of this expression.

7. **Who can apply.**—A lambardar who obtained a decree for arrears of rent, was entitled to apply for ejectment without joining the whole body of co-sharers, because he was the landholder as well as the decree-holder.<sup>3</sup> Now the assignee of a decree cannot apply for execution unless the assignee's interest in the land to which it relates has become and is vested in him.<sup>4</sup> But if the assignee has also become the *thekadar* he can apply.<sup>5</sup> The reason given was that section 59 of Act II of 1901 did not say that the application should be made by the decree-holder, and that in

<sup>1</sup> XII U. D. 55=15 R. D. 248.

<sup>2</sup> *Faqira Singh v. Parduman*, 53 All. 715=1931 A. L. J. 529=1932 A. I. R. All. 92=12 L. R. Rev. 243=XII U. D. (H. C.) 98=135 I. C. 547=15 R. D. 498.

<sup>3</sup> *Paras Ram v. Bholai*, B. R. 21 of 1884.

<sup>4</sup> List II, No. 10, of the Second Schedule. See *Hem Chandra v. Mon Mohini*, 3 C. W. N. 694; *Chatropal v. Gopichand*, 26 Cal. 757 (760).

<sup>5</sup> *Bishun Chand v. Jahana*, IV U. D. 408=5 R. D. 168.

that case therefore it should be made by the landholder for the time being provided he be also the assignee of the decree.<sup>1</sup>

Where a mortgagee obtained a decree for arrears of rent but was redeemed by the mortgagor who paid him the amount of the decree according to a condition in the mortgage, the mortgagor could not execute the decree,<sup>1</sup> as the redemption decree did not assign the decree for arrears to the mortgagor.

A co-sharer who has under section 246(3) obtained a decree for a fractional share of the rent of a holding cannot apply to eject from the holding as he is not the landholder, and section 246(1) bars the application.<sup>2</sup> A decree-holder who is no longer the landholder cannot eject the judgment-debtor who has become some one else's tenant, but he may execute the decree to the extent that execution in any other way is possible.<sup>3</sup>

8. **Against whom.**—If the tenant against whom the decree for arrears was obtained is dead, the application for ejectment may be instituted against his heir when the latter has failed to pay the amount,<sup>4</sup> as section 3(1) includes in the word 'tenant' his successor in interest. But a decree for arrears against the heir of a deceased tenant, as such, obtained in a Civil Court, will not enable the decree-holder to apply for his ejectment from the holding, it not being a Rent Court decree.<sup>5</sup>

A *thekadar* holding land as a tenant may be proceeded against under the section.<sup>6</sup>

9. **Unsatisfied decree.**—The right to apply arises when the decree is unsatisfied. Hence, if there is no arrear due, no application can be made; and, if made and allowed by mistake, the order may be reversed in review, revision or appeal and the tenant reinstated.<sup>7</sup> Suppose that the tenant pays the amount of such decree before any application is made under this section. The application should not be granted, for section 170 distinctly allows 6 weeks grace from the service of the notice for payment. Where a landlord obtained a decree for arrears and then sued for ejectment, and pending the suit, the tenant tendered the amount of the decree, refusal of the landlord to accept the tender did not entitle him to get a decree for ejectment.<sup>8</sup> Where several short adjournments had been allowed and small instalments of the amount due were paid into Court and eventually the court refused further adjournment and ordered

<sup>1</sup> *Megh Singh v. Maharam*, III U. D. 467=4 R. D. 271.

<sup>2</sup> *Basdeo v. Dallu*, B. R. 3 of 1934=XV U. D. (B. R.) 12=15 L.R. Rev. 368.

<sup>3</sup> *Jiwan Singh v. Ram Sarup*, XVII U. D. 344=1936 R. D. 387.

<sup>4</sup> *Mahabir Prasad v. Laladin*, B. R. 1 of 1901.

<sup>5</sup> *Kali Charan v. Jwala Prasad*, B. R. 4 of 1889.

<sup>6</sup> *Radhey Shyam v. Jai Deo*, VIII U. D. 96=8 L. R. Rev. 329=1927 R. C. 385.

<sup>7</sup> *Khub Singh v. Amir Singh*, B. R. 19 of 1884.

<sup>8</sup> *Ram Adhin v. Mahabir*, I U. D. 183=29 I. C. 49; *Munna Lal v. Dan Bahadur Singh*, XV U. D. 191=18 R. D. 21.

ejectment, but before the *parwana* was issued to the Amin to eject, the tenant paid in the whole of the balance due, the Board held that the order of ejectment ought to be cancelled<sup>1</sup> This view has not been accepted in later cases, which ruled that payment should be made before the order of ejectment and that it would be a dangerous doctrine to say that payment may be made up to the time that the Amin delivers actual possession.<sup>2</sup>

10. **Ejectment from joint holding.**—Where the decree for arrear is against some of several co-tenants, there can be no ejectment from the holding. It must be a decree against all the tenants. This will not apply to *sir*-lands held jointly by co-sharers one of whom has sold his proprietary rights and become the exproprietary tenant of a proportionate share of the *sir*, for the co-sharer and the expropriator are not joint tenants. Where no division has taken place there might be some difficulty. The holding from which a tenant is sought to be ejected must be clearly specified.<sup>3</sup>

Where arrears of rent are decreed in respect of occupancy and non-occupancy land forming a holding, there can be no ejectment under the section from the occupancy land until the rent due in respect of it is ascertained.<sup>4</sup>

11. **Tahsildar shall issue such notice.**—He has no option in the matter.

The notice must be served.

Sub-section (2) indicates the contents of the notice issued by the tahsildar.

12. **Sub-section (3).**—Under sub-section (3), a tenant has to establish that he is not liable to ejectment, *e. g.*, that he is a tenant of a higher class, or holds under an unexpired lease.

A plea that the relation of landholder and tenant does not exist between the parties will hardly be open after a decree for arrears of rent which is the basis of an application under section 170 has been passed.

13. **Sub-section (4)**—Actual payment into court or a certified payment under Order 21, Rule 2, Civil Procedure Code, will stay the hand of the court in ordering ejectment.

An uncertified payment will not be taken notice of<sup>5</sup>; but if payment outside the court to the decree-holder is pleaded within the period of

<sup>1</sup> *Thakuri v. Ghasi Ram*, IV U. D. 552—2 L. R. Rev. 235—5 R. D. 317.

<sup>2</sup> *Lallu v. Bhagwan Kunwar*, VI U. D. 301—7 L. R. Rev. 180—1926 R. C. 151—12 R. and Cr. L. J. 192—9 R. D. 32; *Bishun Chand v. Phul Kumari*, 8 L. R. Rev. 209—VIII U. D. 50—1927 R. C. 232—11 R. D. 116.

<sup>3</sup> *Janki v. Maharaja of Benares*, 1 L. R. Rev. 41—II U. D. 72—4 R. D. 540.

<sup>4</sup> *Husain Khan v. Ganga Baksh*, 3 Rev. and Cr. L. J. 38—II U. D. 196—3 R. D. 95.

<sup>5</sup> *Sujan v. Fateh Shah Khan*, B. R. 3 of 1923—V U. D. 125; *Radhey Lal v. Gur Dayal Singh*, II U. D. 319; *Bhagwan Das v. Gulab Singh*, XV U. D. 27.

limitation for certifying, the court ought to entertain the plea and adjudicate upon it and act according to its finding.<sup>1</sup>

**14 If the tenant pays the amount due.**—He need not include the cost of the application under the section,<sup>2</sup> or interest after decree and costs of ejectment.<sup>3</sup>

The full amount should be paid. Part payment will not stay the hand of the court.<sup>4</sup>

**15. Order of ejectment.**—An order under the section must be obtained before actual ejectment.

Ejectment must be made after an order of ejectment has been passed. Such order cannot be held in abeyance or cancelled by the Assistant Collector.<sup>5</sup>

Ejectment of a recorded tenant carries with it the ejectment of a non-recorded co-tenant<sup>6</sup> but not if the latter had no opportunity of intervening either in the rent case or in execution and the correction of papers proceedings were started by him for the entry of his name which were pending at the date of the ejectment.<sup>7</sup>

An order of ejectment under the section was appealable to the District Judge by virtue of section 248 (3) of the Act of 1926 and hence the High Court could revise it.<sup>8</sup>

A tenant is entitled to the whole of the last day of his extension. An order passed on such last day may be set aside if the tenant appears the next day and satisfies the court that he had appeared on the last day with the money.<sup>9</sup>

Where the case is not taken up on the date fixed and is postponed to another date, payment before the case is actually taken up prevents ejectment.<sup>10</sup>

**16. Sub-section (5).**—The sub-section prohibits extension of time beyond six months for payment, as could be done under section 80 (3) of the Act of 1926.

**17. Revision**—Maintaining an order of ejectment by an appellate court before adjusting a claim as to improvement is *ultra vires*.<sup>11</sup> So

<sup>1</sup> *Mahanandan Singh v. Lal Bahadur Singh*, II U. D. 418.

<sup>2</sup> *Harnam Dayal v. Jubbu*, II U. D. 156=3 L. R. Rev. 37=3 R. D. 60; *Moti Singh v. Chandika Prasad*, II U. D. 3=2 B. and Cr. L. J. 181=4 R. D. 475.

<sup>3</sup> *Parshadi v. Ramjas Mal*, V U. D. 89=1922 R. C. 222=7 R. D. 148.

<sup>4</sup> *Salig Ram v. Ram Dayal*, B. R. 11 of 1892=13 A. W. N. 9.

<sup>5</sup> *Bishambhar Dutt v. Bhup Singh*, XV U. D. 233=15 L. R. Rev. 417.

<sup>6</sup> *Dwarka Prasad v. Durga Singh*, I U. D. 27; *Tribhuvan Dutt v. Muhammad Abdul Hasan*, II U. D. 656

<sup>7</sup> *Ali Ahmad v. Niamat-ullah*, XVII U. D. 59.

<sup>8</sup> *Atisha Bibi v. Divandar Prasad*, 1937 A. L. J. 1259=1937 A I R. All. 350=XVIII U. D. (H. C.) 36=1937 R. D. 131.

<sup>9</sup> *Durga v. Charan Singh*, XIX U. D. 124=1938 R. D. 301.

<sup>10</sup> *Ghasi Ram v. Pirana*, XVIII U. D. 4=1937 R. D. 3.

<sup>11</sup> *Badri Prasad v. Ramnath*, 3 Rev. and Cr. L. J. 283=II U. D. 634.

extension of time by a court other than that of the Assistant Collector before whom the proceedings are pending.<sup>1</sup> So an order ordering ejectment after the amount due under a decree for arrears of rent has been paid although the costs of ejectment proceedings have not been paid,<sup>2</sup> so an order of ejectment before the lapse of further time allowed by the court<sup>3</sup> or of the period of grace.<sup>4</sup>

Rejecting an application for review of an order of ejectment without enquiring into a payment concealed by the decree-holder at the time of obtaining an order of ejectment, is failure to exercise jurisdiction.<sup>5</sup>

Passing an order of ejectment on a notice served by affixation without due and reasonable diligence on the part of the process-server to effect personal service<sup>6</sup> is material irregularity ; so refusing ejectment because of an uncertified adjustment.<sup>7</sup>

18. **Review** —When on admission a conditional decree for ejectment was passed, and later on after 90 days the tenant applied for review of judgment on the ground that the rent for one of the years had been paid and produced landlord's receipt for it, and the appellate court found some obscurities in the case, it ought to remand the application for retrial on the ground whether there was sufficient cause for admitting the application after time, and if so, then on merits.<sup>8</sup>

An *ex parte* order of ejectment, even if carried out, is open to review.<sup>9</sup> Where a tenant had made arrangements with A to the knowledge of the landholder to pay the latter's dues, and the tenant went away on military service, this was held to be sufficient ground for review of the ejectment order.<sup>10</sup> Rent was payable in two instalments, 14 *as.* and 2 *as.* The landlord obtained a decree for arrears of the 14 *as.* instalment, and applied for and obtained an ejectment order. The tenant applied for review on the ground (admitted or proved) that he had paid the decretal amount and partly towards the 2 *as.* instalment not sued for. The order of ejectment was set aside, as the decretal amount had been paid prior to its date.<sup>11</sup> An appeal from an order refusing review

<sup>1</sup> *Itwari Lal v. Balwant Singh*, II U. D. 474=3 R. and Cr. L. J. 96.

<sup>2</sup> *Moti Singh v. Chandika Prasad*, II U. D. 3=2 R. and Cr. L. J. 181 ; *Parshadi Ramjas Mal*, V U. D. 89=3 L. R. Rev. 258. See notes 14, at p. 496.

<sup>3</sup> *Shiam Lal v. Jai Gopal*, II U. D. 4=2 R. and Cr. L. J. 111=4 R. D. 474.

<sup>4</sup> *Jaisi Ram v. Nathu Mal*, 32 I. C. 755.

<sup>5</sup> *Mahanandan Singh v. Lal Bahadur Singh*, II U. D. 418.

<sup>6</sup> *Zalim v. Sri Ram*, I U. D. 42=2 Rev. and Cr. L. J. 30.

<sup>7</sup> *Radhey Lal v. Gur Dayal Singh*, II U. D. 319.

<sup>8</sup> *Raj Rajeshwar Devi v. Raghubar Dayal*, XV U. D. 137.

<sup>9</sup> *Tika Singh v. Khushal Singh*, III U. D. 77=4 R. and Cr. L. J. 27=5 R. D. 472 ; *Bhuri Singh v. Sunder Lal*, VII U. D. 97=8 L. R. Rev. 232=1927 R. C. 380=11 R. D. 527.

<sup>10</sup> *Pirano v. Munshi Singh*, 11 L. R. Rev. 228=14 R. D. 501.

<sup>11</sup> *Wasir-un-nisa v. Amir Husain Khan*, XIII U. D. 151=14 L. R. Rev. 59.

passed by an Assistant Collector of the second class was held to lie to the Collector.<sup>1</sup> Whether an appeal from an order against ejectment passed by an Assistant Collector of the first class lies to the Commissioner or the District Judge?

19. **Nature of the application.**—An application under section 170 is No. 4 of Group F of the 4th Schedule and should be made to the court empowered to execute the decree. The limitation is three years from the date of the final decree.

20. For rules made by the Board of Revenue to give effect to this section see under notes to section 163 at pages 474-75 and Form L at pages 478-79 *supra*.

*Ejectment for illegal or detrimental acts.*

171. (1) If a tenant transfers, or sub-lets, the whole or any portion of his holding otherwise than in accordance with the provisions of this Act, and the transferee or sub-lessee has entered upon possession in pursuance of such transfer or sub-lease both the tenant and any person who may have thus obtained possession of the whole or any part of the holding shall on the suit of the landholder be liable to ejectment from the area so transferred or sub-let at the date of the institution of the suit.

(2) To every suit under this section both the tenant and the sub-tenant or the person in whose favour the transfer purports to have been shall be made parties.

1. This section reproduces in effect section 82 of the Act of 1926 and corresponds to section 62(1) (b) of the Oudh Act.

2. **Tenant.** The section applies to exproprietary, occupancy and hereditary tenants, including permanent lessees as defined in the Act, and tenants in Oudh holding under a special agreement or decree to the extent mentioned in section 156.

A tenant holding under a special agreement or decree of court in Oudh will come in if a transfer or sublease would justify ejectment under it.

3. **Transfers or sublets otherwise...Act, i.e.**, after the coming into operation of the Act. See sections 39 and 40 as to permissible subleases. Permanent tenure-holders and fixed-rate tenants have transferable interest. The interest of other classes of tenants is not transferable, except by way of a permissible lease and save as allowed by section 33(2).

Transfer or subletting otherwise than under the provisions of the Act, that it subsists at the date of the suit and that the transferee or sublessee is in possession at such date must be proved.<sup>2</sup>

<sup>1</sup> *Mukhia v Jolha Singh*, II U. D. 258, *Lallu v Bhagwan Kunwar*, VI U. D. 301—*Contra*, *Nain Sukh v. Gobind Prasad* III U. D. 257—4 R. D. 82.

<sup>2</sup> *Lallu v. Bijai Kumar*, XIX U. D. 236—1938 R. D. 669.

A mortgage is a transfer though made by some only of the cotenants, but to cause ejectment it must be proved by satisfactory evidence.<sup>1</sup>

As a permanent lessee outside Ondh, with no powers to transfer, is at the best in the position of an occupancy tenant, a mortgage by him exposes him to ejectment, although he had been perviously in the habit of raising money on the security of his holding.<sup>2</sup> A suit to eject a tenant (and his sublessee) who has sublet his land permanently for building purposes is a suit to eject for illegal subletting and not for an act detrimental to the land.<sup>3</sup>

In *Abdul Latif v Abdul Rahman*<sup>4</sup>, by a forced interpretation, the Board considered a sublease for an advance exceeding two years' rent to be a mortgage or illegal transfer.

The section applies to involuntary transfers such as auction sales.<sup>5</sup>

A usufructuary mortgage made before the Act of 1901 was not void or illegal; and the rights of the mortgagee are protected by and to the extent mentioned in section 47 (2). He cannot therefore be ejected under this section and if an order of the ejectment of the mortgagee and the tenant mortgagor is passed the mortgagee may appeal though the mortgagor does not.<sup>6</sup>

If in a correction of papers case, pending while a suit for the ejectment of a tenant on the ground of illegal subletting is in progress, it is found that the alleged subtenant is not a subtenant at all and his name is ordered to be expunged, the ejectment suit must fail.<sup>7</sup>

Where co-tenants divide up their holding without the landholder's consent, and then each of them sublets the portion which comes to his share without objection from the others, so that the whole of the holding is illegally sublet, the whole body of co-tenants is liable to ejectment under the section,<sup>8</sup> so if they exchange the land received for other lands, they may be ejected under this section and not as trespassers under section 180.<sup>9</sup>

Where one of several co-tenants mortgaged his share of the holding and there was no objection by the other co-tenants, he can be ejected for the illegal alienation if the mortgage subsists at the date of the suit.<sup>10</sup>

<sup>1</sup> *Ibn-i-Hasan v. Goodar*, 1939 A. L. J. (B. R.) 49—XX U. D. 254—1939 R. D. 303.

<sup>2</sup> *Mustafa Husain v. Roghu Nath Ram*, XIII U. D. 79—12 L. R. Rev. 388.

<sup>3</sup> *Lachman Das v. Nabi Baksh*, 31 All. 109—6 A. L. J. 93—1 I. C. 161.

<sup>4</sup> B. R. 3 of 1930—XI U. D. 11—11 L. R. Rev. 278—14 R. D. 537.

<sup>5</sup> *Sri Kishan Lal v. Bujai Singh*, 1932 A. L. J. 857—13 L. R. Rev. 357—1932 A. I. R. All. 701—16 R. D. 564—XIII U. D. (H. C.) 155.

<sup>6</sup> *Johari Singh v. Ram Lal*, XV U. D. 469—15 L. R. Rev. 705.

<sup>7</sup> *Golai v. Tej Bahadur Singh*, 14 L. R. Rev. 109.

<sup>8</sup> *Lachhva v. Damru Lal*, XIX U. D. 117—1938 R. D. 290.

<sup>9</sup> *Gomal v. Bhagwati Prasad*, XVI U. D. 404—1935 R. D. 351.

<sup>10</sup> *Balram Govind Rai v. Nabi Rasul*, 1939 A. L. J. (B. R.) 15.



A tenant who has under the guise of a sublease mortgaged his holding cannot eject the mortgagee as the maxim *in pari delicto* will apply.<sup>1</sup>

A mortgage was executed in favour of A's mother and on the same date a theka of the same property was given to A, there being no separation of interest between A and his mother. The mortgage in mother's favour must be regarded as a possessory mortgage and the mortgagee cannot be ejected by the mortgagor without repayment of the consideration money.<sup>2</sup>

Letting in a fresh subtenant soon after the ejectment of a previous subtenant or allowing a subtenant to continue in possession after the termination of the first term of subletting, is an act in contravention of section 40.

If a portion of a holding was sublet, no other portion can be sublet for three years or one year, as the case may be, of the cesser of the subtenancy or while the subtenancy continues and any such subletting exposes the tenant to ejectment.<sup>3</sup>

**4. Ejectment from part of holding.**—This portion is based on section 83 of the Agra Act of 1926 which corresponded to section 66(1) of the Act of 1901. There was no express provision in the Oudh Act.

The decree should be for ejectment from the portion transferred or sublet at the date of the institution of the suit otherwise than in accordance with the provisions of the Act. The Court has no option to pass any other kind of decree, *e. g.*, for ejectment from the entire holding including portions not so transferred or sublet.<sup>4</sup> The earlier law in section 83 has been entirely abrogated.

In one case it was held that a mortgage by one of two co-tenants binds the other and renders both liable to ejectment.<sup>5</sup>

A transfer to come under the section must be by the sole tenant or the whole body of tenants. Hence a transfer or sub-lease by one of several co-tenants without the consent of the others will not justify a decree for ejectment of the transferor or lessee as it would be partial ejectment under the section, less so when the transferee has not been put in possession<sup>6</sup>, nor can such tenant be declared to have lost his rights, as such a declaration is unprovided for.<sup>7</sup> The fact that the shares of the co-tenants have been fixed by agreement without any actual division having been made is immaterial.<sup>8</sup>

<sup>1</sup> *Tofa v. Kacheru*, XVII U. D. 357=1936 R. D. 474.

<sup>2</sup> *Muneshar v. Ureha*, 1939 A. L. J. (B. R.) 1 relying on *Tofa v. Kacheru*, XVII U. D. 357=1936 R. D. 474.

<sup>3</sup> *Badri Dayal v. Ambay Sahai*, XI U. D. 149=14 R. D. 493.

<sup>4</sup> *Badri Dayal v. Ambay Sahas*, XI U. D. 149.

<sup>5</sup> *Kishen v. Kamta Prasad*, XX U. D. 261=1939 R. D. 309.

<sup>6</sup> *Partab Bahadur v. Mazhar Khan*, XVIII U. D. 183=1937 R. D. 268.

<sup>7</sup> The point was left a query in *Ram Naresh v. Bhulan*, XV U. D. 207.

<sup>8</sup> *Ram Dayal v. Manohar Lal*, XI U. D. 233=12 L. R. Rev. 20=15 R. D. 101.

No order for ejectment can be passed against one of two joint tenants, the other not being a party to the suit, from plots of land which have not been demarcated.<sup>1</sup>

There is no legal bar to ejectment of one of several tenants holding a piece of land under different engagements, the others holding under different engagements being left in occupation.<sup>2</sup>

A suit may therefore be confined to ejectment from a part of the holding and the court may decree it, unless Order 2, rule 2 comes in.<sup>3</sup>

The rulings<sup>4</sup> under the earlier Acts that ejectment could be confined to the part transferred stand good so far as they go.

In a case of transfer of an entire holding the decree should be for ejectment from the whole.<sup>5</sup>

5. **Transferee or sublessee to be in possession.** To justify a suit for ejectment for subletting or transfer the sub-tenant or transferee must be in possession at the date of the institution of the suit, if he is not so in possession, no order for ejectment can be passed.<sup>6</sup>

A mortgage of a holding is an unauthorised transfer, but if it was redeemed before the date of the institution of the suit and the mortgagee put out of possession, a suit under this section will not be decreed.<sup>7</sup>

Redemption after the institution of the suit will not save ejectment.<sup>8</sup>

If such a mortgagee from before 1926 was not ejected within the period of limitation provided by the Act of 1901 a subletting by him after that Act even to the mortgagor was held to justify a suit for ejectment of both for illegal subletting<sup>9</sup>.

A *zar-i-peshgi* lease was at least a sub-lease.

<sup>1</sup> *Bishwa Nath Prasad v. Maharaja of Benares*, 1938 A. L. J. (B. R.) 39.

<sup>2</sup> *Kesho Prasad Singh v. Bhau Nath Singh*, 1931 A. L. J. 321=1931 A. I. R. All. 413=131 I. C. 869=15 R. D. 370, 641.

<sup>3</sup> *Labajan v. Mukund Lal*, XI U. D. 186=14 R. D. 682.

<sup>4</sup> *Mahabal v. Ram Ruchha*, XIV U. D. 104 ; *Kacheru v. Munshi Ram*, XIV U. D. 70=14 L. R. Rev. 433 ; *Hubraji v. Sri Pal Singh*, XIV L. R. Rev. 600.

<sup>5</sup> *Banwari Singh v. Lachman Prasad*, XIV U. D. 489=14 L. R. Rev. 824 ; *Muñ. Mukarram Ali Khan v. Puran*, 1938 A. L. J. (B. R.) 29 , *Dhani Singh v. Muñ. Salim Khan*, II U. D. 446.

<sup>6</sup> See also *Laltu v. Bijai Kuwar*, XIX U. D. 236.

<sup>7</sup> *Secus*, under the Act of 1926, see *Hubraji v. Sripal Singh*, XIV U. D. 306=14 L. R. Rev. 600 ; *Gajadhar v. Amar Nath*, XVIII U. D. 110=1937 R. D. 137 ; *Phokeu v. Abdul Wahab*, XVIII U. D. 278=1937 R. D. 445.

<sup>8</sup> *Balram Govind Rai v. Nabi Rasul*, XIX U. D. 199=1938 R. D. 605.

<sup>9</sup> *Bain v. Frere*, XV U. D. 275=15 L. R. Rev. 463.

The cases under the Act of 1926, where on illegal or persistent subletting the question of giving the benefit of section 83 of that Act arose and was decided are no longer of much help.<sup>1</sup>

If the tenant had obtained an order for the ejectment of the subtenant before the institution of the suit, but the latter was in possession on that date, a decree for ejectment was passed but the tenant was given the benefit of section 83 of the Act of 1926,<sup>2</sup> but now such benefit cannot be given and ejectment must take place. The same remarks apply to a tenant who has tried his best but unsuccessfully to oust the subtenant.<sup>3</sup>

6. On the suit of the landholder, *i. e.*, the whole body of co-sharers. Hence on a mortgage of a holding to one of such co-sharers, the other co-sharers cannot sue under this section with the result, it may be, that the illegal mortgage will stand.<sup>4</sup> In Oudh it was held that a co-sharer who was not a recorded co-sharer need not join.<sup>5</sup>

7. Sub-section (2).—It is imperative to implead the sub-lessee or other transferee, but the landholder is not bound to claim relief against the subtenant where the sublease is voidable.

In a suit for ejecting a subtenant's tenant, the subtenant is a necessary party and should be impleaded,<sup>6</sup> otherwise the suit will not be a suit under this section but will be one against a trespasser.<sup>7</sup>

A *pro forma* defendant against whom no relief is claimed may be ejected where on enquiry it is found that he is interested in the land.<sup>8</sup>

The cesser of the subtenancy may be by the subtenant's surrender.<sup>9</sup>

The difference between void and voidable leases is abolished and *Tula Ram v. Bahadur Singh*<sup>10</sup> and other cases may be read by the curious.

8 In Oudh, section 62 (1) (b) exposed a tenant who had no right of occupancy or who did not hold under a special agreement or decree

<sup>1</sup> *E. g. Malik Chand v. Yusuf Ali*, IV U. D. 535=3 L. R. Rev. 100; *Sarju v. Ganpat*, V U. D. 121=3 L. R. Rev. 435; *Ashfaq Husain v. Jivini*, XIV U. D. 294=14 L. R. Rev. 569; *Kanchan Singh v. Shubba*, XV U. D. 98=15 L. R. Rev. 170; *Sardar Singh v. Bhola Singh*, XIV U. D. 60=14 L. R. Rev. 244; *Dewan Singh v. Jagdish Prakash*, XV U. D. 147=15 L. R. Rev. 177; *Abhay Ram v. Rujender Kuar*, XV U. D. 489=16 L. R. Rev. 64; *Maha Lakshmi Bai v. Gaya Prasad*, XV U. D. 430=15 L. R. Rev. 700; *Abdul Aziz Khan v. Muhammad Ahsan*, XVIII U. D. 187=1937 R. D. 263.

<sup>2</sup> *Shyam Lal v. Shaukat Ali*, XIII U. D. 107=13 L. R. Rev. 107.

<sup>3</sup> *Abdul Hafiz v. Manni Lal*, 13 L. R. Rev. 315.

<sup>4</sup> *Shiva Zor v. Sheo Gopal*, XIII U. D. 64.

<sup>5</sup> *Ram Adhar v. Mahabir*, I U. D. 183.

<sup>6</sup> *Fakhrunnissa v. Imdad*, I U. D. 21=30 L. C. 795.

<sup>7</sup> *Joti Prasad v. Har Prasad*, 1932 A. L. J. 567=1932 A. I. R. All. 473=XIII U. D. (H. C.) 130=13 L. R. Rev. 266=16 R. D. 429.

<sup>8</sup> *Ganga Charan v. Mangli Prasad*, I U. D. 60=31 I. C. 864.

<sup>9</sup> See *Gaya Prasad v. Raghu Nandan Singh*, X U. D. 59=10 L. R. Rev. 249=13 R. D. 455.

<sup>10</sup> B. R. 3 of 1931=XIII U. D. (B. R.) 1=13 L. R. Rev. 127.

of Court and who was not a statutory tenant to ejectment if at the time of the institution of the suit for ejectment, the whole or any part of the holding had been sublet or transferred otherwise than by sub-leases.

It was held that the length of the subletting was immaterial, provided the holding was sublet at the time of the suit.<sup>1</sup> Where a tenant had sublet a part of his holding on year to year basis and such part was in the possession of the subtenant at the time of the institution of the suit for ejectment, he was liable to be ejected even if he had issued notices of ejectment to the subtenants before the institution of the suit.<sup>2</sup> It was also ruled that where the subtenant had held under a definite term lease and the tenant had issued notice of his ejectment under section 54 of the Oudh Act, the tenant was not liable to ejectment under section 62 (1) (b).<sup>3</sup>

Under section 171 all that the court has to consider is whether the subtenant was in possession at the date of the suit. Whether steps already taken to eject him (as in XII U. D. 1 and XVII U. D. 2) will stay the hands of the court is another matter. It is submitted that XII U. D. 1 will hold good and not XVII U. D. 2.

If prior to a suit under section 62 (1) (b), Oudh Act, the tenant had filed proceedings to remove the name of the subtenant as he was not a sub-tenant at all, and this proceeding was decided in his favour after the institution of the ejectment suit, the suit was held to fail.<sup>4</sup>

The fact that after illegal subletting, the tenant wrongfully dispossessed the subtenant, will not affect the illegality of the subletting if the subtenant got himself reinstated by means of a suit for wrongful dispossession.<sup>5</sup>

If the illegal sublease is inadmissible for want of registration, the zamindar may prove that possession of the holding had been transferred to an outsider whom the tenant was not allowed to introduce, and the tenant was therefore liable to ejectment.<sup>6</sup> Illegal subletting may be condoned, and then no ejectment for it can take place, *e. g.*, when landlord creates a fresh tenancy after the subletting in favour of the tenant.<sup>7</sup>

The subletting must be real, that is, by a definite contract of subtenancy. The cultivation of few biswas by a ploughman or other servant of the tenant as part of his wages was held not to create a subtenancy.<sup>8</sup>

<sup>1</sup> *Lalman v. Sheoratan*, B. R. 24 of 1891; *Amir Haidar v. Ram Ratan*, V U. D. 545.

<sup>2</sup> *Parmeshar Singh v. Lal Bahadur Singh*, XVII U. D. 2=1936 R. D. 5.

<sup>3</sup> *Sri Thakurji v. Shambhu*, XII U. D. 1.

<sup>4</sup> *Golai v. Tej Bahadur Singh*, XIII U. D. 143.

<sup>5</sup> *Muhibub Ali v. Bhagwan Din*, IX U. D. 29=9 L. R. Rev. 40.

<sup>6</sup> *Ghirao Lal v. Virendra Bikram Singh*, XII U. D. 312.

<sup>7</sup> *Inder Kuar v. Bansidhar*, XIV U. D. 111=14 L. R. Rev. 808.

<sup>8</sup> *Bindbasini v. Kudai*, B. R. 11 of 1930.

A suit for ejectment for illegal subletting was allowed to be amended into a suit for ejectment for illegal transfer by mortgage, and it was also held that when one of five brothers is the recorded tenant, the landlord may sue him alone, and if another brother not recorded as tenant created the mortgage, the recorded tenant may be ejected for it.<sup>1</sup>

9. **Suit.**—A suit under section 171 is No. 17 of Group B of the Fourth Schedule and is triable by an Assistant Collector of the first class with a right of appeal to the Commissioner. There is no limitation and is the court-fee payable that prescribed by the Court-Fees Act.

**172. (1)** A tenant shall be liable to ejectment from his holding on the suit of the landholder—  
 Ejectment for detrimental act or breach of condition.

(a) on the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let ; or

(b) on the ground that he or any person holding from him has broken a condition on breach of which he is by special contract which is not contrary to the provisions of section 4 liable to be ejected :

Provided that the planting of trees in accordance with the provisions of section 80 or the making of an improvement in accordance with the provisions of this Act or the use of a holding for the purpose of grazing or raising stock, including horses, or the construction of enclosures suitable for stock raising, shall not constitute ground for ejectment under this section.

(2) In any suit for ejectment under this section any person claiming through the tenant may be joined as a party, and, where the plaintiff's cause of action is based wholly or partly on any act or omission or breach of condition by a sub-lessee or other transferee, such sublessee or other transferee shall be joined as a party.

1. The section reproduces in effect section 84 of the Act of 1926, and corresponds to section 62 (1) (a) and (c) of the Oudh Act. Cf. section 62 A (1) (a) and (c) of the Oudh Act.

In the proviso the words "planting of trees in accordance with the provisions of section 80 or the making of an improvement in accordance with the provisions of this Act" have been added. Section 80 relates to the planting of scattered trees on the holding. For improvement in accordance with the provisions of this Act see section 3 (8) and sections 65, 66 and 68. So that in future acts of improvement will not justify a suit for ejectment under this section.<sup>2</sup> But erection of a shed, even

<sup>1</sup> *Gauri Prasad v. Abdul Hasan Khan*, XIII U. D. 147=14 L. R. Rev. 60

<sup>2</sup> This was also the view in *Maharaja of Benares v. Jai Sri Lal*, II U. D. 677 ; *Kishora v. Madho Prasad*, XII U. D. 64=15 R. D. 250 ; *Hemraj v. Dammar*, 8 A. W. N. 120.

though movable, and utilizing it for a *panwala's* shop was held to make a case for ejectment.<sup>1</sup>

2. **Act or omission detrimental, etc.**—*i. e.*, an act of waste, although the value of the land may be otherwise enhanced, *e. g.*, turning arable land into a brickfield, or building.<sup>2</sup> Construction of a pucca well is not necessarily detrimental. The test is whether the act would practically convert the holding into one of a different character, or would be consistent with the reasonable and proper use of the land for the purposes for which it was let.<sup>3</sup> Letting the land to a theatrical company for performances is not justified; but while the land is free from crops and before the next sowing season commences, such letting is not unauthorised.<sup>4</sup> So allowing a professional sugar boiler a country sugar refining plant together with temporary huts for the workmen, after the kharif crop has been cleared away and before the time for sowing the next crop comes, is not illegal.<sup>5</sup> Merely allowing posts to be dug in to grant facility for advertising is also outside the section.

Use of a portion of a building for cattleshed and storage of manures is not necessarily detrimental to the holding.<sup>6</sup>

Whether the building of an indigo factory on a portion of agricultural land is an act detrimental to the land or inconsistent with the purposes for which it was let depends on circumstances.<sup>7</sup>

A lease empowered the lessee to build houses according to his needs. Ejectment was to be for non-payment of rent only. The lessor is entitled to eject for erecting lime-kilns and a pond on the land.<sup>8</sup>

Converting a hut, standing in a corner of a holding and used by Mohammedans for prayers, into a pucca mosque, is a detrimental act.<sup>9</sup>

Planting trees on the holding,<sup>10</sup> except in accordance with section 80 or turning it into a grove, are acts inconsistent with the purpose of agricultural letting.<sup>11</sup> Converting agricultural land into an orchard was in Bengal held to be consistent with the purpose for which it was let.<sup>12</sup> Cutting down trees is an act of waste and entitles the landholder to sue

<sup>1</sup> *Ali Nazar Beg v. Brij Nandan Prasad*, XV U. D. 84=15 L. R. Rev. 63.

<sup>2</sup> *Dina v. Har Kishen*, 37 All. 272=13 A. L. J. 302=28 I. C. 298.

<sup>3</sup> See per Mahmud, J, in *Debi Prasad v. Har Dayal*, 7 All. 691.

<sup>4</sup> *Yusuf Ali v. Hira*, 20 All. 469.

<sup>5</sup> *Lachman v. Khunni Lal*, XIV U. D. 154=14 L. R. Rev. 321.

<sup>6</sup> *Kishora v. Madho Prasad*, XII U. D. 64=15 R. D. 250.

<sup>7</sup> *Har Mohon v. Surendra Narain*, 34 Cal. 718, (P. C.)

<sup>8</sup> *Masood-ul Zamin v. Raza Husain*, 1928 A. I. R. All. 698=10 L. R. Rev. 73=X U. D. (H. C.) 68=110 I. C. 750=13 R. D. 46

<sup>9</sup> *Alla Dea v. Sadanand*, 8 I. C. 732.

<sup>10</sup> *Lachman Das v. Mohan Singh*, 9 A. L. J. 672=14 I. C. 582; *Shiam Narain v. Ram Prasad*, 10 I. C. 28

<sup>11</sup> *Bholai v. Ram Singh*, 4 All. 174=1 A. W. N. 140 See *Kanhya Lal v. Hurayan*, 23 All. 486=21 A. W. N. 164; *Tej Singh v. Ram Das*, Agra F. B. 125; *Koor v. Dick*, 3 N. W. P. 322; *Shiam Narain Singh v. Ram Prasad*, 10 I. C. 28; *Man Singh v. Madho Singh*, 1924 A. I. R. All. 430=23 A. L. J. 70=10 R. and Cr. L. J. 94=79 I. C. 599=VI U. D. (H. C.) 45=5 L. R. Rev. 34=1923 R. O. 566=8 R. D. 353.

<sup>12</sup> *Saman Gope v. Raghubar*, 24 Cal. 160.

for ejectment or damages.<sup>1</sup> The suit must be brought within one year after planting.<sup>2</sup>

Change of crops cultivated is not an act inconsistent with the purposes of letting, unless the circumstances are special.

Use of the water of a well on a holding for the irrigation of other lands of the tenant is not detrimental to the holding or inconsistent with the purpose for which it was let.<sup>3</sup>

The landholder may lose his remedy of ejectment by waiver or acquiescence in an act,<sup>4</sup> though it will not debar him from suing in respect of a subsequent detrimental act or omission. For instance if he has allowed buildings on certain portions of a holding, he can object to another portion being built upon.<sup>5</sup> Though mere delay in suing is not acquiescence, it may induce the Court to refuse ejectment. For instance, where a landholder, knowing that a tenant was changing the character of the holding by planting it with mango trees, took no steps then and for some years after the trees had been planted, he was not allowed to have the trees removed.<sup>6</sup> Where a tenant put up a costly building without any interference on the part of the landholder, the Privy Council has ruled that mere inaction of the latter is not sufficient to deprive him of his remedy, for the tenant must have known that he had no right to do the act. He must have by his conduct induced the tenant to believe that he would not object.<sup>7</sup> Where the act or omission is alleged to have been with the consent of the landholder, it must be proved. One of several proprietors cannot consent on behalf of all unless he is so empowered.<sup>8</sup>

A custom cannot override the clear provisions of section 172.<sup>9</sup>

**3. Breach of condition.**—The condition on a breach of which the right to eject arises must be one not inconsistent with the provisions of section 4 and the special contract must provide for ejectment in case of such breach. A covenant not to sublet at all would be against the Act. Mere non-payment of rent or having outstanding a decree for arrears of rent is not breach of condition within clause (b). The proper

<sup>1</sup> *Fattma v. Hansi*, 7 A. W. N. 30.

<sup>2</sup> *Bhola v. Dan Prasad*, 8 R. and Rev. L. J. 114=V U. D. 45=3 L. R. Rev. 106=7 R. D. 65; *Man Singh v. Madho Singh*, 1924 A. I. R. All. 430=VI U. D. (H. C.) 45.

<sup>3</sup> *Lachmi Narain v. Murl*, 1925 A. I. R. All. 571=VI U. D. (H. C.) 429=11 R. and Cr. L. J. 70=6 L. R. Rev. 39 (1925) R. C. 32=85 I. C. 539=9 R. D. 477.

<sup>4</sup> *Khukal v. Bishun Mohan*, XI U. D. 97=14 R. D. 394.

<sup>5</sup> *Parbhu Narain Singh v. Achuta Prasad*, B. R. 10 of 1922=9 R. and Cr. L. J. 73=V U. D. xcvi=1922 R. C. 342=3 L. R. Rev. 401.

<sup>6</sup> *Nayan v. Rupikun*, 9 Cal. 609 See also *Dabee v. Bhoop Singh*, S. D. A. (1865), Vol. 2, p. 184.

<sup>7</sup> *Beni Ram v. Kundan Lal*, 21 All. 496.

<sup>8</sup> S. 246, *Ghazee-oo deen v. Bhoobun*, 2 Agra, 344.

<sup>9</sup> *Parbhu Narain Singh v. Achuta Prasad*, 9 R. and Cr. L. J. 73=B. R. 10 of 1922=V U. D. xcvi=1922 R. C. 342.

remedy is under sections 168 or 170.<sup>1</sup> In each case the court has to see whether the condition said to be broken is "not contrary to the provisions of section 4" The breach of a condition inconsistent with the provisions of section 4 will not be any ground for ejectment as it is not binding on the tenant in any event. Some term leases granted in some zamindar is secure various advantages to the zamindar. Most of the conditions centre round the meaning of the term rent, and one has to see whether any other advantage secured to a landholder in addition to the sum or quantity described expressly as rent is part of the rent. One cannot say that the rulings of our High Court are uniform on this point. In *Roocha Ram v. Naga Das*,<sup>2</sup> a stipulation to pay one anna in the rupee to make up for the exchange between the current coins and the coins in which rents were agreed to be paid was held to be not for a cess but part of the rent. In *Sheoamber Singh v. The Collector of Azamgarh*,<sup>3</sup> a condition in a *wajib-ul-arz* entitling the zamindar to take half of the fruits and wood of trees, so much poppy seeds, so much sugarcane juice, one rupee from tenants pressing sugarcane in a mill, etc. was the subject of dispute. The High Court had to decide whether a suit for a declaration that no such custom as was recorded in the *wajib-ul-arz* existed lay in a Civil Court. The question of the legality of the imposts was not up for decision. The Chief Justice held that the imposts were not part of rent but were customary dues, the legality of which the Courts below should decide. Banerji and Tudball, JJ., agreed with this. In *Sis Ram v. Asghar Ali*,<sup>4</sup> a covenant to deliver to the landlord, over and above the sum specified as money rent, certain agricultural produce, and to supply a cart and bullock when necessary, was held to be unenforceable by Rafique and Piggot, JJ. In *Rangi Lal v. Jassa*,<sup>5</sup> three judges ruled that a covenant to deliver, in addition to the cash rent, *bhusa*, *chari*, etc. was for part of the real rent and enforceable. For a fuller discussion see note to section 56 of the Land Revenue Act. Even if this be accepted as laying down the correct law, a covenant to give free service at sowing and harvest, to supply *ghi* or other article at below the market price, etc. cannot be considered as a part of the real rent, and hence is illegal.

A covenant in a seven years' lease empowering, the landholder to take back the land at any time is not illegal.<sup>6</sup>

<sup>1</sup> *Mohra v. Baldeo*, B. R. 5 of 1891; *Rajbansi v. Phoku*, 2 A. W. N. 191; *Tara Singh v. Khushal*, 3 A. L. J. 319; *Kuber Das v. Ram Din*, 45 All. 5—20 A. L. J. 269—1923 A. I. R. All. 14—1922 R. C. 335—8 R. and Cr. L. J. 269—77 I. C. 927—V U. D. (H. C.) 85—7 R. D. 185; *Ghurey v. Sewa Ram*, 4 L. R. Rev. 125—1924 R. C. 127—VI U. D. 99—9 R. D. 513.

<sup>2</sup> 2 N. W. P. 92

<sup>3</sup> 34 All. 358—9 A. L. J. 431—14 I. C. 138

<sup>4</sup> 35 All. 19—10 A. L. J. 416—16 I. C. 422.

<sup>5</sup> 38 All. 286—14 A. L. J. 393—35 I. C. 208—2 R. and Cr. L. J. 175.

<sup>6</sup> *Partab Singh v. Birwa*, VI U. D. 285—11 R. and Cr. L. J. 27—5 L. R. Rev. 341—1924 R. C. 494—9 R. D. 202. See also *Jhabba Lal v. Debi Ram*, 1925 A. I. R. All. 679—VI U. D. (H. C.) 448—11 R. and Cr. L. J. 158—6 L. R. Rev. 121—85 I. C. 575—(1925) R. C. 128—9 R. D. 468.



A covenant not to associate with bad characters has nothing to do with the occupation of land, to which alone clause (b) refers and cannot, therefore, be a basis for ejectment.

A provision for *begar* in a lease is illegal and its breach is no ground for ejectment.<sup>1</sup>

Law and custom which under the Rent Act (of 1881) could have caused forfeiture on breach of a covenant have no place in this section. All that a Court has to see now is whether the special contract between the parties entails forfeiture. The contract and the breach of the covenant which it visits with such a penalty must be strictly proved. The contract must distinctly show that the covenant, the breach of which is alleged, is secured by a condition of forfeiture.<sup>2</sup> Courts will construe against a forfeiture if possible,<sup>3</sup> and even if a case for forfeiture be established, section 173 empowers them to grant tenants a *locus pœnitentiæ*. Such power should be used where the breach is not wilful,<sup>4</sup> or where the damage is nil or slight or remediable by money compensation. Nor will ejectment be enforced where the lease provides another remedy for the breach, or the landholder has waived his right to it or has acquiescence in the breach, but waiver in respect of or acquiesced as to one breach, does not deprive him of his right to avail himself of a subsequent breach. The breach may be due to the tenant or anyone holding from him *e. g.*, a subtenant.

4. Certain uses of land are put outside the section. Under the earlier Acts the putting up of a shed on a portion of a holding for the accommodation of cattle employed for agricultural purposes and of the herd engaged to take care of them,<sup>5</sup> or building a house on a small portion of the holding for the convenient or profitable use or occupation of the holding,<sup>6</sup> did not render the tenant liable to ejectment. This will hold good even now.

Keeping land let for reclamation as pasture will be under clause (a).<sup>7</sup>

5. **Sub-section (2).** Any person claiming through the tenant may be impleaded, *e. g.*, his sublessee, but in case of an act or omission under clause (a) or breach of condition under clause (b) by a sublessee or transferee, the latter must be made a party.

6. In Oudh, section 108 (4) related to all suits for ejectment of tenants. All such suits had to be brought within one year of the accrual

<sup>1</sup> *Bhuneshwar Prasad Rai v. Budhu*, 10 L. R. Rev. 137 = X U. D. 84 = 13 R. D. 380.

<sup>2</sup> *Rahim-on-nissa v. Soopanjan*, 18 W. R. 244.

<sup>3</sup> *Ablakh Rai v. Salim*, 2 All. 237; *Hemraj v. Dammar*, 2 A. W. N. 120; *Nayan v. Rupikun*, 9 Cal. 609.

<sup>4</sup> *Duli Chand v. Meher Chand*, 8 W. R. 138, (P. C.).

<sup>5</sup> *Hemraj v. Dammar*, 8 A. W. N. 120.

<sup>6</sup> *Maharaja of Benares v. Jai Sri Lal*, 11 U. D. 677.

<sup>7</sup> *Sheo Balak Singh v. Sheoraj Singh*, 111 U. D. 99 = 5 R. and Cr. L. J. 107 = 5 R. D. 511.

of the cause of action, but section 133-A provided that a suit for ejectment on the ground that a decree for arrears of rent had remained unsatisfied could be instituted at any time so long as the plaintiff was entitled to apply for execution of the decree for arrears of rent on the basis of which he had brought the suit for ejectment.

The suit was and is within the exclusive jurisdiction of revenue courts.<sup>1</sup>

The rent need not have been fixed to enable a landholder to eject his tenant.<sup>2</sup>

It was held that the court should not allow a suit for arrears of rent under section 108 (2) and a suit for ejectment under section 108 (4) to be joined, as the *fori* of appeal in the two cases were different.<sup>3</sup> But under section 127 (1) read with section 108 (2), Oudh Act, it was open to the court on the application of the plaintiff to pass a decree for ejectment, and hence the contention in such a case that as a suit for arrears lay under section 108 (2) and a suit for ejectment lay under section 108 (4), separate suits for arrears and for ejectment should be brought was not maintainable.<sup>4</sup>

The person to be ejected was and is a tenant. If the defendant denies the relation of landholder and tenant, his position as tenant has to be established. The fact that the patwari has entered *A* as tenant does not prevent the landholder from suing to eject *B* who is the real tenant.<sup>5</sup> The defendant may show that he is not a tenant but an under-proprietor.<sup>6</sup>

A landlord granted a permanent but non-transferable lease to *A*, who mortgaged the land to *B*. This rendered *A* and *B* both liable to ejectment. Hence the landlord could not sue to eject *B* under this section as an ordinary tenant.<sup>7</sup>

It was held that a suit to remove a structure put on a holding could be brought in a Civil Court.<sup>8</sup> This will no longer be good law.

7. A suit under the section is No. 7 of Group A of the Fourth Schedule. It lies in the Court of an Assistant Collector of the first Class with a right of appeal, if any, to the Civil Court.<sup>9</sup> Limitation is one

<sup>1</sup> *Muhammad Abul v. Prag*, 20 O. C. 8, (P. C.).

<sup>2</sup> *Kishan Lal v. Balwant Singh*, B. R. 9 of 1887.

<sup>3</sup> *Madho Prasad v. Lachhman*, B. R. 11 of 1924=VI U. D. (B. R.) 58=6 L. R. Rev. (O.) 43=2 O. W. N. 19.

<sup>4</sup> *Chattarpal Singh v. Bhadeswar Prasad Singh*, XI U. D. (H. C.) 61=11 L. R. Rev. 18=13 R. D. 829.

<sup>5</sup> *Uma Nath Baksh v. Dhum Singh*, XIV U. D. 80=14 L. R. Rev. 319.

<sup>6</sup> *Ib.*

<sup>7</sup> *Bharat v. Raja Ramji*, B. R. 15 of 1912.

<sup>8</sup> *Khuda Baksh v. Gouri Shankar*, 23 O. C. 163=57 I. C. 476

<sup>9</sup> *Chokhey Lal v. Bishal Singh*, 14 L. R. Rev. 811=XIV U. D. 405.

year from the date when the detrimental or inconsistent act is done or the condition is broken. Court-fee payable is that prescribed by the Court-Fees Act.

**173.** (1) A decree for ejectment under section 172 may direct the ejectment of the tenant either from the holding or from such portion thereof as the court, having regard to all the circumstances of the case, may direct.

Decree in suit under section 172.

(2) Such decree shall further direct that if the tenant repairs the damage, or pays such compensation as the court thinks fit within three months from the date of the decree or within such further period as the court may, for reasons to be recorded, allow, the decree shall not be executed except in respect of costs.

1. The section corresponds to section 85 (1) and (2) of the Act of 1926, which reproduced section 65 of the Act of 1901. In sub-section (2), "s'all" displaces "may" and "three months" is substituted for "one month."

The court has jurisdiction to eject from a portion of a holding. To avoid ejectment, the damage must be repaired or compensation paid within three months.

Section 35, Code of Civil Procedure, governs sub-section (2) as to costs, and in granting a decree under sub-section (2) to the landholder the court may award only half the costs incurred by him.<sup>1</sup>

2. Where a part of a holding was turned into a brick field, ejectment from the whole was allowed.<sup>2</sup> As a rule where only a part of a field, part of a holding, is used for non-agricultural purposes without affecting the use of the others as agricultural land, ejectment should be confined to that one field<sup>3</sup>; so where a *kutch*a building was constructed on two biswas in a holding of over 9 bighas, ejectment was directed as to the two biswas.<sup>4</sup>

**174.** Notwithstanding anything in section 172 a landholder may, in lieu of suing for ejectment, sue—  
Suit for compensation,  
injunction, etc.

(a) for compensation; or

<sup>1</sup> *Parmeshwar Dutt v. Durga*, XII U. D. 341.

<sup>2</sup> *Dina v. Har Kishan*, 13 A. L. J. 302.

<sup>3</sup> *Kallu v. Sunder Lal*, B. R. 4 of 1914—I U. D. 32; *Mushtaq v. Hulas* V U. D. 128=6 R. D. 41=3 L. R. Rev. 294; *Sarkar Dulaiya v. Kallu*, IX U. D. 3=19 L. R. Rev. 2=12 R. D. 32.

<sup>4</sup> *Bhaggi v. Ram Gopal*, II U. D. 527; *Ram Nihal v. Jamuna*, IV U. D. 591=2 L. R. Rev. 69=5 R. D. 352; *Parbhu Narain Singh v. Achuta Prasad*, B. R. 10 of 1922=V U. D. 98; *Sarkar Dulaiya v. Kallu*, IX U. D. 3.

- (b) for an injunction with or without compensation ; or  
 (c) for the repair of the damage or waste with or without compensation.

Reproduces section 85 (3) of the Act of 1926, omitting the words "in addition to or."

1. **Planting and cutting of trees.**—If an agricultural tenant plants some trees on his holding he comes under clause (a) of section 172 and the landholder may sue under this section and hence a suit for damages or an injunction will not lie in a Civil Court. But if the landholder condones the offence or consents to the planting of such trees the latter cannot be cut down by either party without the consent of the other. A suit for damages for cutting down the trees or some of them is essentially a Civil Court suit, as the cutting down is not an act detrimental to the land or inconsistent with the purpose for which it was let, viz, cultivation, or breach of a condition entailing ejectment.<sup>1</sup>

**Fixed-rate tenant, forum.**—This section applies only when the landholder has a right of ejectment under section 171 and as a fixed-rate tenant cannot be proceeded against under that section he cannot be sued under this section. Hence a suit for injunction restraining a fixed-rate tenant from making an unauthorized construction or for compensation lies in Civil Court.<sup>2</sup>

2. **Waiver.**—A landholder who has accepted rent from the tenant subsequent to the date of forfeiture is taken to have waived his right,<sup>3</sup> so if he sues for rent which has accrued subsequent to that date.<sup>4</sup>

3. **Revision.**—Omission to consider whether the benefit of this section should not have been granted is a ground for revision.<sup>5</sup>

4. **Suit.**—A suit under this section for an injunction, or for the repairs of damage or waste, or for compensation, falls under Group A (No. 8) of the Fourth Schedule. It is cognisable by an Assistant Collector of the first class and the appeal, if any from his order, lies to the Civil Court. The limitation is one year from the date when the damage is done, or the waste begins, or the condition is broken. Court-fee is assessed on the plaintiff's valuation.

### *Ejectment on other grounds.*

**175.** Subject to the provisions of section 19 a non-occu-  
 Ejectment on applica- pancy tenant shall also be liable to ejectment  
 tion. on the application of the landholder on any

<sup>1</sup> *Lachman Das v. Mohan Singh*, 9 A. L. J. 672=14 I. C. 582.

<sup>2</sup> *Asharfi Singh v. Chandrika Prasad Kuar*, 1940 A. L. J. 261, dissenting from *Kashi Kahar v. Asharfi Singh*, 1938 A. L. J. 720, which held that such a suit lay in the Revenue Court, as relief could be obtained under this section.

<sup>3</sup> *Kali Krishna v. Fasal Ali*, 9 Cal. 843.

<sup>4</sup> *Jageshri v. Mohammad Ibrahim*, 14 Cal. 33.

<sup>5</sup> *Kedar Nath v. Ram Hit*, XIII U. D. 52. "

of the following grounds, namely :—

(a) that he is a tenant holding from year to year ;

(b) that he is a tenant holding under a lease or for a period which has expired or will expire before the end of the current agricultural year.

1. This section is in effect section 86 (1) of the Agra Act of 1926, and corresponds to section 54 of the Oudh Act.

Section 86 of the Act of 1926 corresponded to clauses (a) and (b) of section 58 of the Act of 1901, and to section 36 of the Act of 1881.

2. **Landholder.**—The person who can give notice is the landholder, although he is an insolvent<sup>1</sup>

Where the proprietary rights in a holding belong to more than one person, all must join in ejecting from the whole or any part of it. They cannot divide the holding among themselves without the consent of the tenant, so as to split up one holding into two or more.<sup>2</sup>

Where the proprietary rights in one of the fields of a holding were mortgaged to A and in the others to B B alone cannot without joining A eject the tenant of the holding,<sup>3</sup> because A and B represent the landlord.

A lessee of proprietary rights in *sir* can eject the *sir* tenants.<sup>4</sup>

The *sirdar* and not the *lambardar* can eject the *shikmi* of the *sir*.<sup>5</sup>

A purchaser of *sir* who has not obtained mutation cannot eject,<sup>6</sup> nor an owner who has redeemed but not reported his redemption.<sup>7</sup> This is because of section 34 (5), Land Revenue Act. Where a mortgagee is in possession, he is the person entitled to eject and not the mortgagor, even pending a suit for redemption.<sup>8</sup>

<sup>1</sup> *Rungoi v. Deoki Nandan*, VI U D 85=5 L R R-v. (O.) 77=8 R. D 140

<sup>2</sup> *Gajraj v. Muhammad Sddiq*, IV U D 490 ; *Chandrika Prasad v. Surat*, XI U D. 141 ; *Noor v Rameshwar Prasad*, XVIII U D 54=1937 R. D 55

<sup>3</sup> *Kedar Nath v Ram Hit*, XIII U. D 52.

<sup>4</sup> *Ram Din Rai v. Sita Ram Rai*, IV U D. 123.

<sup>5</sup> *Gurdin v. Abdul Wahab*, II U D. 423.

<sup>6</sup> *Avadesh Singh v. Gajadhar Singh*, 4 L. R. Rev 37=V U D. 303=1922 R. C. 454=7 R D 515

<sup>7</sup> *Sobha v. Daryai*, 4 U. P. L. R. 46=3 L. R. Rev. 406=1922 R C. 289=8 R. and Cr. L. J 209=V U. D. 181=6 R. D. 161.

<sup>8</sup> *Lekhraj v. Kalka*, 1 Leg. Rem. 211 ; *Misri Lal v. Jageshwar*, IV U. D. 277=6 R. and Cr. L. J. 273=4 U P. L. R. 86=6 R. D. 478 ; *Bansi v. Ganesh*, 8 L. R. Rev. 348=VIII U. D. 118=(1922) R C. 411=11 R. D. 568 ; but see *Thakur Ram v. Nohar*, II U. D. 483. Where the mortgagee of a co sharer has not obtained mutation, all co-sharers may give a valid notice, *Achhaibar v. Ori*, II U. D. 319=4 R. D. 140.

<sup>9</sup> *Ali Baksh v. Parkashanand*, I U. D. 317=31 I. C. 464.

If a *sir*-holder mortgages his *sir*, and the name of his mortgagee is entered as being in possession, he, the *sir*-holder, cannot sue to eject the cultivator as his *shikmi*, without getting the entry amended.<sup>1</sup>

A person who has in law because an exproprietary tenant, but has not taken possession of his holding within the period of limitation cannot proceed to eject as his sub-tenant the persons in occupation.<sup>2</sup>

Where on the death of an occupancy tenant, a person who is not the heir, gets his name entered as a non-occupancy tenant with the consent of the zamindar, he cannot eject a sub-tenant of the holding in possession from before the death of the tenant.<sup>3</sup>

As a general rule the zamindar cannot eject a sub-tenant without ejecting the tenant-in-chief<sup>4</sup> unless such tenant become *mafrur* and a presumption of death can be made,<sup>5</sup> but a presumption of death should not be lightly made.<sup>6</sup> In *Ram Kishore v. Swarath Rai*,<sup>7</sup> the landlord was held justified in treating the mortgagee of his tenant, who had absconded either after or without relinquishment, but after having validly mortgaged his holding, as his tenant and proceeding in ejectment against him. Ordinarily, the mere fact that no trace is found of the heirs of a deceased tenant is no justification for the landlord treating the holding as abandoned and proceeding to eject the sub-tenant as his tenant-in-chief.<sup>8</sup> If without taking steps under section 88, the landlord begins to collect rents from sub-tenants of a tenant alleged to have surrendered, he does so as agent of the tenant and cannot eject the sub-tenants.<sup>9</sup> A landlord cannot, by granting a lease to A over the head of the tenant in possession, make the lessee his tenant-in-chief and the tenant his sub-tenant.<sup>10</sup> Entry of a person's name as *shikmi* over the land of another merely proves occupation; whether he is a subtenant depends on circumstances such as payment of rent, etc.<sup>11</sup>

The sublessee of an occupancy tenant may proceed against the actual cultivator.<sup>12</sup> The tenant-in-chief and not the zamindar can eject

<sup>1</sup> *Marjad v. Ram Raohcha*, X U. D. 188=13 R. D. 585.

<sup>2</sup> *Nageshar v. Ram Tahal*, I U. D. 238=1 O. L. J. 692=26 I. C. 722.

<sup>3</sup> *Ganga Prasad v. Ram Lal*, X U. D. 74=13 R. D. 423; *Nazir-un-nissa v. Imdad Ali*, I U. D. 21

<sup>4</sup> *Suraj Bikram Singh v. Sewak Ram*, IV U. D. 577=2 L. R. Rev. 247=5 R. D. 341. See footnote 1 at p. 514 *infra*

<sup>5</sup> *Randhir Singh v. Har Sahai Ram*, I U. D. 15.

<sup>6</sup> *Jai Karan v. Ram Charitra*, I U. D. 129=33 I. C. 488.

<sup>7</sup> II U. D. 174.

<sup>8</sup> *Raja Singh v. Pargan Singh*, I U. D. 362=32 I. C. 586

<sup>9</sup> *Ram Charan v. Bhagwan*, I U. D. 391; *Nakched v. Gulab*, II U. D. 32=4 R. D. 503.

<sup>10</sup> *Ram Ablakh v. Ram Sumer*, VII U. D. 83=8 L. R. Rev. 315=1927 R. C. 363=11 R. D. 514; *Bhaqwandin v. Bhabhuti Singh*, III U. D. 164; *Brjbasi v. Gadhapati*, 9 L. R. Rev. 287=10 L. R. Rev. 103; *Rikhdava v. Raghunandan*, IV U. D. 648=3 L. R. Rev. 65=8 R. and Cr. L. J. 96=5 R. D. 54=6 R. D. 59; *Thakur Rai v. Ram Narain*, V U. D. 499=1922 R. C. 544

<sup>11</sup> *Hulas Singh v. Jit Singh*, I U. D. 218=1 O. L. J. 154=25 I. C. 177; *Sauwal Singh v. Prag Dat*, 1 O. L. J. 517=26 I. C. 83.

<sup>12</sup> *Nathi v. Ajudhi*, 3 L. R. Rev. 486=9 R. and Cr. L. J. 58=V U. D. 197=1922 R. C. 444=7 R. D. 487.

a *shikmi*.<sup>1</sup> In a suit to eject a subtenant who set up a tenancy-in-chief in himself the zamindar is a necessary party.<sup>2</sup> The zamindar is not a necessary party to such a suit, unless it is proved that the *shikmi* has been paying rent direct to the zamindar, and the tenant-in-chief need not be an occupancy tenant.<sup>3</sup> Ordinarily, a lambardar may<sup>4</sup> proceed, but not if he does not collect rents.<sup>5</sup>

A sub-tenancy comes to an end on the death heirless of the tenant-in-chief and no notice is necessary for the ejectment of the holder of the sub-tenancy after such death.<sup>6</sup> Now, section 47 (4) must be consulted. If the sub-lease was valid and not terminable at death, this decision will be no guide.

A mortgage of a holding which is not transferable by law is invalid and if the mortgagee is entered as a subtenant, (and not without reason), he may be ejected by notice.<sup>7</sup>

A mortgagee cannot be ejected by the mortgagor as a trespasser or sub-tenant though the mortgage be illegal.<sup>8</sup>

The only person entitled to eject a tenant is the person to whom he pays rent.<sup>9</sup> For instance, a co-sharer in a mahal to whom the rent is payable may eject though he is not the lambardar.<sup>10</sup> Where an estate is taken under direct management by the Collector under section 151, Land Revenue Act, for arrears in payment of revenue, the Collector is the manager of the estate and entitled to sue for ejectment. He may authorise another person to sue, but only after careful consideration or the authority will be useless.<sup>11</sup>

Where a co-sharer has not been heard of for seven or eight years and his land is in the possession of another co-sharer who pays the revenue thereof the latter may eject.<sup>12</sup>

<sup>1</sup> *Parbhu Narain Singh v. Bhagwant Singh*, 1922 R. C. 382=V U. D. 167=3 L. R. Rev. 414=5 R. D. 167=6 R. D. 171. See footnote 4 at p 513 *supra*.

<sup>2</sup> *Raghubir v. Adhin*, X U. D. 118=10 L. R. Rev. 126=13 R. D. 363 ; *Sarju v. Bindhachal*, XVIII U. D. 39=1937 R. D. 23.

<sup>3</sup> *Jiana v. Jamadani*, X U. D. 205=14 R. D. 81.

<sup>4</sup> B. R. 21 of 1883=1 of 1897=6 of 1903 ; *Thakur Ram v. Nohar*, II U. D. 483.

<sup>5</sup> *Jhamman v. Bhimi*, B. R. 2 of 1910 ; *Jatan v. Tilak Ram*, II U. D. 589.

<sup>6</sup> *Jadha Singh v. Darbari Lal*, IX U. D. (H. C.) 94=9 L. R. Rev. 88=104 I. C. 193=1 Luck. Ca. 285=11 R. D. 225=2 Luck. 612.

<sup>7</sup> *Muh. Sabbar v. Shervani*, XI U. D. 129.

<sup>8</sup> *Jalaluddin v. Raja Ram*, B. R. 4 of 1929=X U. D. (B. R.) 60 ; *Raghnandan, v. Puttoo Lal*, XII U. D. 275.

<sup>9</sup> *Ib.*

<sup>10</sup> *Durga Singh v. Harchand*, B. R. Second Appeal No. 17 of 1908-09 ; *Muneswar v. Mahesha*, 1924 A. I. R. All. 165=1923 R. C. 449=4 L. R. Rev. 329=V U. D. (H. C.) 242=74 I. C. 197=7 R. D. 68.

<sup>11</sup> *Chajju v. Padam Chond*, VI U. D. 386=11 R. and Cr. L. J. 134=6 L. R. Rev. 107=1925 R. C. 212=8 R. D. 289.

<sup>12</sup> *Jamna Rai v. Jagerdeo*, VIII U. D. 127=8 L. R. Rev. 355=1927 R. C. 417=11 R. D. 20. See also *Jamuna Rai v. Mitta*, VIII U. D. 128=8 L. R. Rev. 356=1927 R. C. 419=12 R. D. 288.

Collection of rent and obtaining of decrees for rent by a co-sharer is not conclusive evidence of exclusive right to collect rent as against other co-sharers.<sup>1</sup>

A notice issued by three persons one of whom had sold his right was held to be invalid although the purchaser's name had not been mutated.<sup>2</sup>

A non-recorded co-sharer need not join.<sup>3</sup> When a zamindar takes into his cultivatory possession a holding of the tenant who has not relinquished it, the tenant may proceed under section 183 and not sue to eject him as a subtenant.<sup>4</sup>

An under-proprietor so long as his name stands, may issue notice.<sup>5</sup>

As to a thekadar's powers to eject see section 211.

A partition takes effect from the first of July following the date of its confirmation by the Collector. But this does not preclude the cosharer to whose mahal certain land has been allotted from ejecting its tenants at once after the date of confirmation, provided it is before the first of October,<sup>6</sup> although he cannot eject before the date of such confirmation,<sup>7</sup> nor while partition proceedings are pending.<sup>8</sup> A lambar-dar may issue notice between the dates of confirmation of partition and of its taking effect.<sup>9</sup>

Where a civil court confirms a private partition carried out by the owners, though that partition is not entered in the patwari's papers, the owner to whose lot a plot has been assigned may alone eject.<sup>10</sup>

Where several *khatas* are amalgamated into one at a partition, the proprietor of one of the *khatas* may, before confirmation, eject

<sup>1</sup> *Muazzama v. Jagrup*, IV U. D. 320=6 R. D. 512.

<sup>2</sup> *Lautan v. Bans Gopal*, IV U. D. 354.

<sup>3</sup> *Ram Dhin v. Mahabir*, 29 I. C. 476.

<sup>4</sup> *Gaya v. Mendhai*, 2 U. D. 31.

<sup>5</sup> *Maula Khan v. Bindeshri*, VI U. D. 1=4 L. R. Rev. 317=8 R. D. 60.

<sup>6</sup> *Gopi Nath v. Abdul Aziz*, B R 10 of 1910; *Sarjoo v. Abhdoot Singh*, 2 Rev. and Cr. L. J. 4=II U. D. 403=4 R. D. 518; *Sital Rai v. Lodi*, VI U. D. 294=11 Rev. and Cr. L. J. 37=5 L. R. Rev. (Oudh) 183=1924 R. C. 437=9 R. D. 249.

<sup>7</sup> *Niadar Singh v. Ghasi*, III U. D. 204=1 U. P. L. R. (B. R.) 31=53 I. C. 76=4 R. D. 48; *Dutt Chand v. Mangli*, VI U. D. 462=12 Rev. and Cr. L. J. 1=6 L. R. Rev. 225=1925 R. C. 470=9 R. D. 56.

<sup>8</sup> *Dattu Singh v. Ram Das*, 2 U. P. L. R. (B. R.) 97=1 L. R. Rev. 148=6 Rev. and Cr. L. J. 290=61 I. C. 264=IV U. D. 426=5 R. D. 211; *Mustahab Ali v. Baldeo*, 7 Rev. and Cr. L. J. 260=IV U. D. 319=3 U. P. L. R. 29=6 R. D. 513.

<sup>9</sup> *Ram Das v. Jangi Singh*, V U. D. 542=4 L. R. Rev. 281=7 R. D. 333.

<sup>10</sup> *Bikramajit Singh v. Nauk Singh*, 1926 R. C. 504=VII U. D. 234=7 L. R. Rev. 404=10 R. D. 272.



a tenant of land therein, without joining the owners of the other *khattas*.<sup>1</sup>

An occupancy tenant mortgaged his holding to *A* before 1902. After his death without heirs, *A* remained in occupation as a tenant-at-will. *A*, in lieu of payment of his mortgage-money by *B*, a co-sharer in the village, lets him into possession. On a private partition, this land was allotted to a co-sharer *C*. *C* can eject *B* either as transferee of *A* or as his subtenant.<sup>2</sup> Where an occupancy tenant granted a lease of his holding to one of the zamindars and during the currency of the lease another person, *A*, got into possession and began to claim it as *khudkasht*, as he was also a zamindar, the right of the tenant is not affected, for *A* is either a transferee from the lessee or a trespasser.<sup>3</sup>

If a cultivator under a rent-free grantee obtained occupancy rights under Act II of 1901, he is a tenant in his own right and not liable to ejectment at the instance of the rent-free grantee.<sup>4</sup>

3. **Tenant.**—Where the occupier of land is not a tenant he cannot be ejected under the section, for instance, a proprietor who cultivates land as his *khudkasht*. A proprietor sells his interest in the village to *A*, but does not assert or relinquish his rights as exproprietary tenant, and *A* takes up the cultivation of the land which his predecessor occupied as *sir* and *khudkasht*. He does so as proprietor and not as tenant, and therefore cannot be ejected by the *lambardar*.<sup>5</sup> And if after relinquishment of his exproprietary right, the vendor enters into possession of what was his *sir*, he does so as a trespasser or as a non-occupancy tenant, in either of which events he is liable to ejectment.<sup>6</sup> Where a co-sharer in the zamindari cultivates more land than falls to his share, the remedy is not ejectment, but to require him to render account.<sup>7</sup> But there is nothing to prevent a co-sharer from becoming by express contract a tenant of the whole proprietary body in respect of a specified plot of land.<sup>8</sup>

4. **Converting of suits**, from this section to section 180. Under the Act of 1926 it was held that if the relation of landholder and tenant (*e. g.* tenant-in-chief and subtenant) was not proved, and the defendant was found to be a trespasser, a proceeding under section 175 could not be converted into a suit under section 180.<sup>9</sup> Under the present Act such a

<sup>1</sup> *Jageshwar Mal v. Raghunandan*, VI U. D. 172=5 L. R. Rev. 217=1924 R. C. 263=8 R. D. 168.

<sup>2</sup> *Hawal Rai v. Har Prasad*, 45 All. 711=21 A. L. J. 631=1924 A. I. R. All. 57=1923 R. C. 643=4 L. R. Rev. 437=V U. D. (H. C.) 196=75 I. C. 835=7 R. D. 70.

<sup>3</sup> *Bijadhar v. Jeat*, 22 A. L. J. 647.

<sup>4</sup> *Mangroo v. Ambika Prasad*, 15 L. R. Rev. 172=14 L. R. Rev. 912.

<sup>5</sup> *Nathu Ram v. Bhawan Das*, B. R. 10 of 1885.

<sup>6</sup> *Harihar Baksh v. Gajadhar Baksh*, B. R. 11 of 1904.

<sup>7</sup> *Indar Lal v. Deojit* 4 A. L. J. 1.

<sup>8</sup> See note (X) at p. 50 *supra*.

<sup>9</sup> *Gajju Singh v. Baldeo Singh*, XU D. 70=XI U. D. 4=10 L. R. Rev. 283=13 R. D. 427; *Ramdhar Rai v. Mahabir Singh*, XII U. D. 265=12 L. R. Rev. 346=15 R. D. 706; *Hidayatullah v. Rahimullah*, XV U. D. 490, *Hari Nath v. Satyadeo*, 1939 R. D. 533 (holding that it is not possible to convert a suit under section 86 (now 175) to one under section 44. (new 180) though the contrary is possible.)

conversion is possible, for which there is an express provision in section 244.

5. A person who is in possession in consequence of an agreement between him and the occupancy tenant, and who has been found judicially to have no tenant rights in the holding, and who in consequence of this is entered as *qabiz*, is either a subtenant of the occupancy tenant or holding with the latter's consent and is liable to ejectment.<sup>1</sup>

Where *A* is found to be the tenant-in-chief and *B* who is sued under this section alleges that he holds direct from the zamindar but fails to prove that fact and *A* fails to prove any contract of tenancy between him and *B*, *B* may be a trespasser as against *A*. He cannot be sued under section 175.<sup>2</sup>

The word *holding* is not used in the section. Hence land for grazing and a grass *khar* for which rent is paid is within the section and its tenant may be ejected under it.<sup>3</sup>

Non-occupancy tenants can be ejected from the area for which they pay rent or for which, except for a contract expressed or implied, they would be liable to pay rent, without reference to the question whether this area is or is not *land* within the definition of that word in the Act, provided that they come within the definition of tenant as contained in the Act. Hence a person who had occupied for over 13 years a piece of waste land which had only *mahua* trees on it (about 26 years old) without payment of rent, there being no contract remitting its payment, is not a tenant who could under section 58 of Act II of 1901 be ejected.<sup>4</sup> There was also a finding in the case that the land was not occupied without consent so as to attract section 34 of the Act of 1901 (corresponding to section 180 of the present Act.) The decision is opposed to *Harbans Singh v. Kishun Sahai*,<sup>5</sup> where an old fallow growing thatching grass, included in a holding where crops were cultivated and paying a lump rent, was held not to be land as defined in the Act, and therefore the tenant was held not liable to ejectment from it under section 58 corresponding to the present section 175.

The same line of reasoning prevailed in the cases noted in the footnote, that if an occupant of what is not land within the definition of that term paid rent for one of the things mentioned in the definition of rent, he was a tenant and could be ejected under section 58 of Act II of 1901.<sup>6</sup>

<sup>1</sup> *Kailu v. Nubiban*, XI U. D. 93=14 R. D. 397.

<sup>2</sup> *Mihun Lal v. Surendrajit Singh*, XVIII U. D. 145=1937 R. D. 173.

<sup>3</sup> *Paramhansman v. Dusrathman*, 43 All. 445=19 A. L. J. 292=1921 A. I. R. All. 128=7 Rev. and Cr. L. J. 105, 273=2 L. J. R. Rev. 161=60 I. C. 770=IV U. D. 717=6 R. D. 309; *Nathan v. Harbans Singh*, 1930 A. I. R. All. 254=1930 A. L. J. 852=14 R. D. 115=11 L. R. Rev. 42=X U. D. (H. C.) 103.

<sup>4</sup> *Kayastha Pathshala v. Sita Ram*, II U. D. 298=3 R. D. 204

<sup>5</sup> II U. D. 19; see also *Sher Alam Khan v. Muh Said Khan*, III U. D. 1233=5 R. and Cr. L. J. 17=1 U. P. L. R. 11=52 I. C. 228=5 R. D. 527; *Misra Kali Charan v. Sital*, III U. D. 293=1 U. P. L. R. 32=53 I. C. 82=4 R. D. 115; *Muh. Mahmud Khan v. Ganga Ram*, B. R. 6 of 1910.

<sup>6</sup> *Paramhansman v. Dusrathman*, 43 All. 445 (pasture land); *Rameshar Singh v. Madho Lal*, 42 All. 36=17 A. L. J. 791=1 L. R. Rev. 21=6 R. and Cr. L. J. 47 (groveland); *Nathan v. Harbans Singh*, 1930 A. L. J. 352=1930 A. I. R. All. 254 (thatching grass), *Sheo Balak Singh v. Sheoraj Singh*, III U. D. 19, (pasture land).

In some cases<sup>1</sup> the High Court adopted the view in *Harbans Singh v. Kishun Sahai*.<sup>2</sup>

*Abadi*.—A revenue court cannot eject from *abadi* land, unless it is a path or *parti*, when it is regarded as part of a holding.<sup>3</sup>

*Building*.—A non-occupancy or *sir*-tenant who builds a house on his holding without the landlord's consent does so at his risk and may be ejected from the site along with the rest of the holding as a non-occupancy tenant.<sup>4</sup>

Where there is nothing to show on what tenure a tenant holds from his landholder, the presumption is that he is a yearly tenant.<sup>5</sup>

Where long before the Tenancy Act was enacted *e. g.*, in 1882, Government granted certain persons a village, and executed a lease in their favour embodying terms that the tenants were *pacca asami* and that they were to settle tenants on the land, the grantees are not mere tenants at will liable to ejectment but have heritable tenancy rights.<sup>6</sup>

Widow of occupancy tenant holding over after remarriage was held not to be a non-occupancy tenant.<sup>7</sup>

If one of two co-tenants mortgaged certain specific plots while Act II of 1901 was in force, and in a civil suit between the co-tenants, those plots were decreed to the mortgagor, and on the death of the latter his interest devolved on the surviving co-tenant, the latter cannot eject the mortgagee as a non-occupancy tenant but should redeem from him.<sup>8</sup>

A mortgagee of a holding, whose mortgage is illegal under the Act, is not a non-occupancy tenant of the mortgagor tenant and cannot be ejected by the latter under section 175.<sup>9</sup>

The mortgagee of a holding is not its subtenant as he was taken to be before the Act.<sup>10</sup> Hence, if a transaction is really a mortgage and not a sublease for 5 years, and the mortgagee continues in possession after the expiration of the term of the mortgage (5 years) because

<sup>1</sup> *Abdul Qayyum v. Fida Husain*, 13 A. L. J. 854; *Mohib Ali v. Surat Singh*, 15 I. C. 743.

<sup>2</sup> II U. D. 19.

<sup>3</sup> *Ram Sewak v. Beni Madho*, II U. D. 26=4 R. D. 498.

<sup>4</sup> *Amrita Bibi v. Mahadeo*, B. R. 2 of 1919=III U. D. 27=3 L. R. Rev. 270=5 R. and Cr. L. J. 82, 140; *Rameshar Singh v. Bhim Singh*, 4 Rev. and Cr. L. J. 158=III U. D. 245=4 R. D. 64

<sup>5</sup> *Goordial v. Ramdul*, Agra, F. B. 15.

<sup>6</sup> *Amba Datt Sathi v. Secretary of State*, 1935 A. I. R. All. 974=1935 R. D. 402=XVI U. D. 493.

<sup>7</sup> *Raghubar Rai v. Sonari*, 15 L. R. Rev. 934=XV U. D. 66.

<sup>8</sup> *Udit Narain v. Jurbandhan*, XV U. D. 446=15 L. R. Rev. 692.

<sup>9</sup> *Pitai v. Kuredin Singh*, B. R. 2 of 1933=XIV U. D. B. R. 23; *Sooraj Pal Singh v. Munshi Lal*, XVII U. D. 62; *Har Suran Pathak v. Abdulla Khan*, XVIII U. D. 63.

<sup>10</sup> *Hardam Piari v. Ammanullah*, XII U. D. 9=15 R. D. 150.

his money has not been paid back, section 175 cannot be utilised to eject him.<sup>1</sup> The proper remedy may be a suit under section 171.<sup>2</sup>

The mortgagee of a holding, after the mortgagor's right ceases cannot be ejected under this section by the landlord, even though the latter received rent from him on behalf of the tenant, although action may be taken against him under section 180.<sup>3</sup>

Where a co-tenant after executing a registered usufructuary mortgage for three years died heirless and his rights survived to the other co-tenants the latter cannot proceed to eject the mortgagee as a sub-tenant.<sup>4</sup>

Where a lease does not protect the lessee from ejectment *e. g.*, as being an invalid or an ineffective lease, the fact that the lessee has not obtained possession, though his name is entered as a co-tenant with others, does not preclude the landholder from ejecting him; and if his lease protects him from ejectment from an infinitesimal portion of a holding, he may be ejected from the whole.<sup>5</sup>

A suit under section 180 can be decreed as if brought under section 175 if the defendant be found to be a non-occupancy tenant.<sup>6</sup> See section 244.

Land not previously cultivated within the meaning of section 4 (3) was leased to *R* for 7 years terminating in 1336. He was allowed to remain in possession in 1337. He is not a trespasser if he holds over and may be proceeded against under section 175.<sup>7</sup>

Where a proceeding for ejectment is brought against a tenant on any of the grounds mentioned in the section, and he denies that he is a non-occupancy tenant he should plead and prove<sup>8</sup> his right of occupancy, or that for some other reason he is not liable to ejectment, *e. g.*, that he is the mortgagee, and that fact is not proved by the production of an unregistered but compulsorily registerable deed.<sup>9</sup> But where the mortgagee has performed his contract by paying the consideration, and has obtained possession, section, 53-A T. P. A. and section 41 Proviso, Registration Act, apply, and the document of mortgage though not registered may be proved to establish the mortgage.<sup>10</sup>

<sup>1</sup> *Sukhraj v. Baran*, XV U. D. 308=15 L. R. Rev. 560; *Balak Ram v. Nathoo*, XVII U. D. 325=1936 R. D. 46

<sup>2</sup> *Bharat v. Raja Ramji*, B. R. 15 of 1912.

<sup>3</sup> But see *Rajpal v. Rudra Partab Narain Singh*, II U. D. 613=3 O. L. J. 219.

<sup>4</sup> *Narottam v. Shiam Lal*, XVIII U. D. 199.

<sup>5</sup> *Raghu Nath Singh v. Mohan Singh*, XVI U. D. 97.

<sup>6</sup> *Umrao Singh v. Dina Singh*, XVIII U. D. 336=1937 R. D. 522. See also *Harinath v. Satyadeo*, 1939 R. D. 533

<sup>7</sup> *Ram Dayal v. Lalita Prasad*, XIV U. D. 136=14 L. R. Rev. 519.

<sup>8</sup> *Puddomone v. Jholla*, 7 W. R. 283; *Nobo Coomar v. Uzir*, 23 W. R. 238; *Murli Dhar v. Lal Mavi*, B. R. 10 of 1918=III U. D. 20

<sup>9</sup> *Brij Mohan v. Hans Raj*, 12 L. R. Rev. 90=15 R. D. 281.

<sup>10</sup> *Dharam v. Chunni*, XIV U. D. 71=14 L. R. Rev. 157, dissenting from *Brij Mohan v. Haim Raj*, 12 L. R. Rev. 90=15 R. D. 281.

He may prove that he has acquired occupancy rights. When once it has been decided by competent Court that a tenant has acquired occupancy rights, that question cannot subsequently be re-opened by a suit under the Tenancy Act.<sup>1</sup> So, if the landholder has consented to a transfer of occupancy rights which is not authorised by law and led the purchaser to believe that he was acquiring occupancy rights, the transfer will not be validated but the landholder will be estopped, under section 115 of the Evidence Act, from denying the existence of the occupancy right.<sup>2</sup> The fact that a person has after acquiring occupancy rights executed a *kabuliat* in favour of the landholder empowering him to eject at the end of any year will not cause the tenant loss of the rights,<sup>3</sup> and will in no way affect his heirs who succeed to the holding.<sup>4</sup> Where a defendant pleads that he is not a tenant, the *onus* of proving that fact lies on him. The landholder has not to prove the absence of circumstances which entitle the tenant to retain possession.<sup>5</sup>

A proceeding commenced in the twelfth year of occupation was bound to succeed although the tenant was entitled to hold on to the end of that year.<sup>6</sup>

Section 175 does not apply to a person who is not a non-occupancy tenant, nor to a subtenant or cultivator under or on behalf of an occupancy, exproprietary, hereditary or fixed-rate tenant, or a tenant holding under a special agreement or decree, so long as the tenancy-in-chief exists. For instance the principal landholder cannot, during the subsistence of an occupancy tenant, sue to eject his subtenant. So where a son allows his mother to be in possession of his exproprietary holding she cannot be ejected so long as he remains such tenant.<sup>7</sup> So a partner. Take however, a case like this. *A*, an occupancy tenant, being blind, makes a gift of his holding to *B*, who may not be his heir presumptive according to section 35 and causes *B*'s name to be entered in the annual registers. *B* cultivates the land, and it is proved that *A* receives a portion of the profits for his maintenance. The landholder, some years after the gift, sues to eject *B* as a non-occupancy tenant. The gift was invalid and did not confer occupancy rights on *B*, but *A*'s rights can be extinguished only for one of the causes mentioned in section 45 *i. e.*, death without heirs, ejectment, relinquishment, or acquisition of the land for a public purpose. The cause that the landholder may rely on is relinquishment, that is, surrender or abandonment. It certainly is not a

<sup>1</sup> See *Jahan Khan v. Dilaram*, B. R. 14 of 1884.

<sup>2</sup> *Dharajit v. Bhajan Lal*, B. R. 14 of 1890. See also *Kidar Nath v. Raghubar*, B. R. 2 of 1888.

<sup>3</sup> *Beni Singh v. Ghulam Ali*, B. R. 8 of 1885.

<sup>4</sup> *Laljit v. Unrau*, 5 All. 103=2 A. W. N. 196=3 L. R. 185.

<sup>5</sup> *Nobo Coomar v. Uzir*, 23 W. R. 238.

<sup>6</sup> *Machley v. Bharat Indu*, 33 I. C. 429=I. U. D. 122; *Kesho Singh v. Baldeo Singh*, III U. D. 350=4 R. D. 166; *Tulshi v. Sarla Sukh*, B. R. 1 of 1889; *Deoki Nandan v. Salig Ram*, B. R. 11 of 1881.

<sup>7</sup> *Janki v. Sheokali*, 4 Leg. Rem. 16.

case of surrender. Nor it is submitted, does it come under abandonment. The transferee of a heritable but non-transferable lease could be ejected by notice in Oudh,<sup>1</sup> but now he will be amenable to action under section 171 or 180.

A mortgaged his *sir* to B in 1893, and in 1901 sold it to C. C ejected A as an exproprietary tenant. He cannot eject B, as his purchase was subsequent to the transfer to B.<sup>2</sup>

Suppose a fixed-rate tenant is ejected for arrears of rent, and the zamindar takes the amount of the arrears from a third party A, and instals him in the holding at once. A has not become a fixed-rate tenant thereby, but the Court may refuse to eject him on the grounds specified in this section.<sup>3</sup>

Where a fixed-rate tenant acquiesced in his sub-tenant planting trees on his holding, he cannot long after take proceedings under section 175 for ejectment as of an ordinary sub-tenant, because the sub-tenant must be deemed to hold under a special contract and was not a tenant-at-will.<sup>4</sup> This however will not apply to a sub-tenant holding under an occupancy tenant, as the latter himself has no power to plant trees on his holding.<sup>5</sup>

Where a subtenant planted a grove with the proved consent, express or implied, of the tenant-in-chief he held under an implied agreement so far as the tenant-in-chief was concerned, to hold so long as the grove lasted, and the tenant-in-chief cannot eject him before.<sup>6</sup>

Where an occupancy tenant has encroached on other land and has been permitted to treat it as an integral part of his holding for a long time, he cannot be ejected from the encroached portion as a non-occupancy tenant.

A subtenant who builds an enclosure for feeding cattle renders himself liable to ejectment under this section, though proceedings have not been taken under section 172 (a).<sup>7</sup> A tenant cannot get over the Act by converting land let for agricultural purpose into land held for non-agricultural purpose, *e. g.* by building.<sup>8</sup>

<sup>1</sup> *Deputy Commissioner v. Rama Nand*, II U. D. 476 ; *Ram Din v. Ram Bharos*, I U. D. 273 ; *Ram Nath v. Audh Behari*, II U. D. 627 ; *Indrapal v. Uman Pratab*, IV U. D. 546.

<sup>2</sup> *Dukhi Singh v. Srinivas*, S. A. 1156 of 1906, decided on 3rd June, 1907.

<sup>3</sup> *Kishan Das v. Daya Shankar*, B. R. 10 of 1887 ; *Sukhundhar v. Malakhi*, 2 Leg. Rem 56.

<sup>4</sup> *Prabhavati Debi v. Bikramajit Singh*, 13 L. R. Rev. 327—XIII U. D. 148, following *Jolai v. Sant Bakesh*, B. R. 7 of 1912.

<sup>5</sup> *Phalli Koeri v. Balmakund*, B. R. 5 of 1926—7 L. R. Rev. 353, 330—VII U. D. 210—VII U. D. (B. R.) xxxiii, 41—1926 R. O. 420—10 R. D. 577.

<sup>6</sup> *Jagat Narain Rai v. Gauri*, B. R. 7 of 1933—13 L. R. Rev. 157.

<sup>7</sup> *Babban v. Ram Loshun*, 32 I. C. 576—I U. D. 393.

<sup>8</sup> *Ib.*

6. A person occupying land without the consent of the landholder is not its non-occupancy tenant or a tenant at all. Under section 127 Oudh Act, it was held that he should be deemed to be a tenant for the purposes of the section and therefore notice could issue to him.<sup>1</sup> This was because a suit under section 127 was primarily for rent. Now under section 180 the suit will be for ejectment and these rulings will not apply. Similar remarks apply to the following rulings under the Oudh Rent Act which held that notices could issue on the persons named :—

- (i) On a mere cash *nankar* or *dahaik* holder.<sup>2</sup>
- (ii) On a lessee from a Hindu widow in possession of a life estate, on her death.<sup>3</sup>
- (iii) On a tenant maintained in possession in a summary revenue case in 1861 at the rent he was then paying.<sup>4</sup>
- (iv) On a *nankar*-holder with a lease of the village on the terms to be offered by the taluqadar after his refusal to accept the lease on the terms offered.<sup>5</sup>
- (v) On a holder under a rent-free grantee who had been declared to be a statutory tenant.<sup>6</sup>

The following rulings which held that notice could not issue to the persons named are good now but superfluous :—

- (i) *Mawat* grant-holders,<sup>7</sup> as such a grant is hereditary, though not transferable.
- (ii) *Shankalap* grant-holders, though there is a change of rent subsequent to the grant.<sup>8</sup>
- (iii) Cash *nankar* allowance holder, who is also an under-proprietor.<sup>9</sup>
- (iv) *Under-proprietor*,<sup>10</sup> or person entered as such for a long series of years.<sup>11</sup>

<sup>1</sup> *Sat Narain Prasad v. Ram Kunwar*, B. R. 3 of 1910 ; *Hem Nath v. Baldeo*, II U. D. 637 ; *Dilraj Kuar v. Salar Baksh*, B. R. 6 of 1892 ; *Bhan Singh v. Jageshar Singh*, III U. D. 566 ; *Contra*, 3 O. L. J. 448.

<sup>2</sup> *Bhagtrath v. Bhagwati Prasad Singh*, II U. D. 550 ; *Gauri Shankar v. Court of Wards*, II U. D. 562 ; *Sahebodin v. Muhammad Abdul Hasan Khan*, I U. D. 376 ; *Muhammad Abdul Hasan Khan v. Kelo Singh*, I U. D. 277.

<sup>3</sup> *Hanuman Dat v. Sri Ram Kuar*, B. R. 5 of 1909.

<sup>4</sup> *Mulaim v. Naik Ram*, B. R. 3 of 1892.

<sup>5</sup> *Court of Wards v. Parmatma Din*, I U. D. 290.

<sup>6</sup> *Bijai Raj Kunwar v. Bansidhar*, 2 U. P. L. R (B. R.) 134=IV U. D. 440.

<sup>7</sup> *Kalka Singh v. Sheo Ratan*, II U. D. 434=B. R. 18 of 1910.

<sup>8</sup> *Lotun v. Ajodhia Estate*, II U. D. 498.

<sup>9</sup> *Lal Muneshwar Baksh Singh v. Shahsada Khan*, I U. D. 330.

<sup>10</sup> *Muhammad Husain v. Mahadeo Prasad*, I U. D. 394 ; *Ram Bharos v. Lal Achal Ram Singh*, B. R. 30 of 1891 ; *Tulshi Ram v. Lal Achal Ram Singh*, B. R. 31 of 1891 ; *Ram Nidh v. Lal Achal Ram Singh*, B. R. 32 of 1891 ; *Parbhu v. Maharaja of Balrampur*, II U. D. 491, *Nanku Singh v. Ghulam Husain*, 2 O. C. 84 ; *Mahabir Singh v. Court of Wards*, II U. D. 653 ; *Gurdin Baksh Singh v. Qamar Jahan*, XI U. D. 132.

<sup>11</sup> *Ali Akbar v. Shujaat Haidar*, 1 L. R. Rev. (A.) 34=III U. D. 658.

- (v) On lessees under leases granted under Circular 16 of 1874, as they are heritable leases.<sup>1</sup>
- (vi) On permanent lessees under special agreement or decree of Court.<sup>2</sup>
- (vii) On a person entered as *shikmi* in the patwari papers, but holding a Civil Court decree declaring that he is the proprietor and entitled to redeem.<sup>3</sup>
- (viii) On a *guzaradar*.<sup>4</sup>
- (ix) On a person who has a *prima facie* case of being a *pattidar*.<sup>5</sup>
- (x) On a person holding at favourable rate of rent.<sup>6</sup> This position was not accepted by some members of the Board who considered that Chapter VIIA provided an alternative and not exclusive procedure for ejectment of such tenants.<sup>7</sup>

In any event, the rent ought to be favourable deliberately,<sup>8</sup> and not by accident.<sup>9</sup> A rent is favourable when it does not exceed the amount of the revenue and cesses<sup>10</sup>

- (xi) On a person who has received from a lessee of the talukdar the land in exchange for some under-proprietary land given by him to the lessee for the purpose of erecting a canal or drain for which the lease had been granted.<sup>11</sup>
- (xii) On a mortgagee by the mortgagor, when the mortgage is valid.<sup>12</sup>
- (xiii) On the holder of a service tenure.<sup>13</sup>
- (xiv) On the holder of a grove, the land of which was granted for planting it, so long as the grove retains its character,<sup>14</sup> unless the land was granted for planting a grove on the condition that the right of the tenant in it shall be the

<sup>1</sup> *Mahadeo Prasad v. Ajodhya Prasad*, II U. D. 612.

<sup>2</sup> *Baldeo Singh v. Bishambhar Nath*, B. R. 3 of 1903.

<sup>3</sup> *Sanwal Singh v. Prag Dat*, I U. D. 220.

<sup>4</sup> *Rameshwar Buz Singh v. Lal Muneshwar Buz Singh*, X U. D. 220.

<sup>5</sup> *Raghunath Kuar v. Court of Wards*, I U. D. 232.

<sup>6</sup> *Ram Kumar v. Partab Bahadur Singh*, II U. D. 497—3 Rev. and Cr. L. J. 110 ; *Court of Wards v. Gauri Shankar*, I U. D. 228 ; *Balgobind v. Ramphal*, 4 O. C. 264.

<sup>7</sup> *Hanuman Dutt v. Sri Ram Kuar*, B. R. 5 of 1909 ; *Court of Wards v. Suraj Bali*, I U. D. 268.

<sup>8</sup> *Ram Kumar v. Partab Bahadur*, B. R. 1 of 1917 ; *Shafiquzzaman v. Tasaddug Husain*, II U. D. 228.

<sup>9</sup> *Ramadhan v. Bhagwati Prasad Singh*, II U. D. 617.

<sup>10</sup> I U. D. 268.

<sup>11</sup> *Sheoraj v. Fakhruddin*, I U. D. 323.

<sup>12</sup> *Chhotey Lal v. Ajodhya Parshad*, B. R. 5 of 1901.

<sup>13</sup> *Dhan Kuar v. Bhagwati Prasad*, B. R. 18 of 1893.

<sup>14</sup> *Mokund Prasad v. Debi*, B. R. 7 of 1893 ; *Badri Prasad v. Bhim Sen*, B. R. 2 of 1892.



same as if the land had remained under cultivation.<sup>1</sup> The holder must prove that he holds under special terms as to non-ejectment.<sup>2</sup>

Where a landlord sees a fruit orchard being planted year by year by a tenant and does not forbid the planting or take action for ejectment in reasonable time, permission to plant will be implied, and he will be deemed to be holding under a special contract and not liable to ejectment as a tenant-at-will.<sup>3</sup>

(xv) On the grantee of a *Kabzadari* right which is expressly made heritable but not transferable.<sup>4</sup>

(xvi) On a person claiming as proprietor by right and the tenant by adverse possession.<sup>5</sup>

(xvii) On a perpetual rent-free grantee, although a light rent has subsequently been fixed.<sup>6</sup>

(xviii) On a tenant holding under a compromise decree which makes his tenancy heritable but not transferable and him liable to ejectment on non-payment of rent but does not terminate the tenancy on such event.<sup>7</sup>

7. **Or for a period.**—The Act confers on certain agreements and orders the effect of permitting a tenant to hold on for a specified period *e. g.*, on an agreement for enhancement of rent of a non-occupancy tenant the tenant can hold on for five years under section 97. The *ratio decidendi* in *Raghu Nath v. Kishori Saran*,<sup>8</sup> will apply and the tenant will not be liable to ejectment for the periods indicated.

A tenant holding over after the expiration of a lease is in the position of a tenant from year to year.<sup>9</sup> Where a tenant renewed a lease at an enhanced rent but did not pay such rent he cannot claim under that lease.<sup>10</sup>

An unregistered lease for a term exceeding a year is not admissible as a lease but is evidence of the landlord's conduct.<sup>11</sup> If wrongly admitted in a civil court, revenue courts may ignore it.<sup>12</sup>

<sup>1</sup> *Jagar Nath v. Maharajah of Balrampur*, II U. D. 508.

<sup>2</sup> *Bhuli Khan v. Chandrabhan Partab Bahadur Singh*, IV U. D. 91; when the grove loses its character, ejectment may be by notice, *Pancham Lal v. Sirdar Nihal Singh*, 7 R. and Cr. L. J. 35.

<sup>3</sup> *Jolai v. Sant Baksh*, B. R. 7 of 1912

<sup>4</sup> *Mu. Zaki v. Rashid Ali Khan*, 7 R. and Cr. L. J., 19—2 U. P. L. R. (B. R.) 135.

<sup>5</sup> *Harnarain Singh v. Satrohan Singh*, 2 U. P. L. R. (B. R.) 145.

<sup>6</sup> *Yar Muhammad Khan v. Gaya Datta*, IV U. D. 415.

<sup>7</sup> *Baldeo Ram v. Ram Kumar*, IV U. D. 441.

<sup>8</sup> B. R. 1 of 1905.

<sup>9</sup> *Chaturi Singh v. Mukund Lal*, 7 Cal. 710—9 C. L. R. 240; *Muhammad Rous Ali Khan v. Maheshwar Prasad*, 5 O. C. 118.

<sup>10</sup> *Ram Prasad v. Dalla*, I U. D. 288.

<sup>11</sup> *Badri Narain v. Shree Gopal*, 1 L. R. Rev. 118—IV U. D. 255—6 R. D. 452.

<sup>12</sup> *Har Kishan v. Ram Sarup Das*, V U. D. 379—4 L. R. Rev. 149, 285—1923 R. O. 67—9 R. and Cr. L. J. 179—6 R. D. 33.

8. **Which has expired.**—Notice may be issued on the expiration of the term of a lease,<sup>1</sup> although the lessee was assumed to hold over for a year without readmission,<sup>2</sup> and a lease may expire by efflux of time.<sup>3</sup> A lease liable to renewal at the option of the lessee or tenant does not terminate on the expiration of the term of the original lease.<sup>4</sup> A tenant wrongfully ejected and then reinstated holds for the term originally fixed.<sup>5</sup> A lease must be definite and not vague.<sup>6</sup> A lessee for an indefinite term under an unregistered lease could be ejected as a tenant-at-will.<sup>7</sup>

A tenant holding under a lease was before this Act a non-occupancy tenant. The right of a lessee need not be circumscribed as of a non-occupancy tenant without a lease, *i. e.*, his position may be something more than that of such a non-occupancy tenant. If he has not transferable right in the land, a transferee from him is simply a non-occupancy tenant.<sup>8</sup>

Where the evidence showed possession of A as thekadar of over 90 years and payment of rent by him, the onus of proving that he holds under a lease the term of which has expired lies on the zamindar.<sup>9</sup>

A *sir* tenant may be liable to ejectment under section 175 but if the landholder has accepted a substantial *nazrana*, permitted him to build a *bandh* and promised in writing not to eject him, a proceeding for ejectment under section 175 must be dismissed, although the writing has not been registered.<sup>10</sup>

9 **Or will expire before the end of the current agricultural year, *i. e.*, before the tenancy has determined.**<sup>11</sup>

If the tenant disputes that the lease has expired or will expire before the current agricultural year, the landholder has to prove that

<sup>1</sup> *Raghu Nath Prasad Singh v. Ghessan*, II U. D. 80; *Rameshwar v. Abbas Ali Khan*, I U. D. 526; *Maheshwar Prasad v. Muhammad Ewas Ali Khan*, 31 All. 394, (P. C.)—12 O. C. 293.

<sup>2</sup> *Court of Wards v. Raghubar Singh*, B. R. 12 of 1918

<sup>3</sup> *Baldeo Prasad v. Muhammad Ishaq*, XII U. D. 292. So far as the ruling relates to termination of lease for breach of condition it is modified by section 172.

<sup>4</sup> *Debi Dayal v. Narain Lal*, II U. D. 579—3 Rev. and Cr. L. J. 257.

<sup>5</sup> See *Sukhraj Kuar v. Rajeshwar Prasad*, III U. D. 148.

<sup>6</sup> *Ram Baran Singh v. Puja Singh*, 3 U. P. L. R. 42—2 U. P. L. R. (B. R.) 29—IV U. D. 41—6 R. and Cr. L. J. 128—1 L. R. Rev. 81—6 R. D. 147.

<sup>7</sup> *Ram Prasad v. Sarju*, I U. D. 226.

<sup>8</sup> *Ram Nath Singh v. Awadh Behari*, II U. D. 627—33 I. C. 210.

<sup>9</sup> *Daryai Singh v. Chob Singh*, 1926 A. I. R. All. 248—VI U. D. (H. C.) 603—12 Rev. and Cr. L. J. 49—6 L. R. Rev. 237—91 I. C. 863—(1925) R. O. 500—9 R. D. 96.

<sup>10</sup> *Deva Das v. Sheo Ratan Singh*, XIII U. D. 137; *Phulesra v. Sheo Baran*, XV U. D. 551—16 L. R. Rev. 93.

<sup>11</sup> This was also the law before, see *Deoki Nandan v. Salig Ram*, B. R. 11 of 1892; *Tulshi v. Sadasukhmal*, B. R. 1 of 1899.

it has expired or will so expire.<sup>1</sup> He may also show that the lease was not a valid or genuine lease.<sup>2</sup>

The term of a permanent lessee does not expire. Hence section 175 cannot be resorted to in his case.<sup>3</sup> Now the Board of Revenue regards him as occupancy tenant.<sup>4</sup> But the view has been dissented from in *Sri Ram Lakshman Janki v Muh. Khalil*.<sup>5</sup>

10. An application for the ejectment of a non-occupancy tenant is No. 7 of Group C of the Fourth Schedule and pays a court-fee of eight annas. There is no limitation. It is triable by an Assistant Collector of the second class.

The fact that a previous suit for ejectment of the cultivator of *sir* land as non-occupancy tenant was dismissed for default in 1922, does not bar a proceeding under section 175 against such cultivator, as section 11, Civil Procedure Code, does not obviously apply, and O. 9, r. 9 does not, since the cause of action for ejectment from *sir* accrues from year to year.<sup>6</sup> In a later case, a Member of the Board of Revenue went into the question of the starting point of limitation in a suit for ejectment between a tenant and his subtenant or *kabiz*.<sup>7</sup>

Where two co-sharers, one of whom is in possession under some supposed title, are fighting over some *sir* plots neither is a subtenant or a trespasser amenable to section 180.<sup>8</sup>

One proceeding may be taken in respect a holding comprising land in two mahals,<sup>9</sup> but not in respect of two holdings.<sup>10</sup>

11. For rules made by the Board of Revenue to give effect to this section see under notes to section 163 at pages 474-75 and Form M at page 480 *supra*.

**176. (I)** An application for the ejectment of a tenant under the provisions of section 175 shall be made between the first day of July and the thirtieth day of September and not otherwise, and shall be accompanied by the notice specified in section 161 :

Application  
notice.

a n d

Provided that if the application is made within the prescribed period the court may allow the names of other persons having an interest in the tenancy or who are for any other reason

<sup>1</sup> *Mahomed Masud Hasan Khan v. Raghubar*, B. R. 13 of 1893.

<sup>2</sup> *Khunni Lal v. Dina*, B. R. 10 of 1913.

<sup>3</sup> *Sitaramji v. Sant Kunwar*, 15 L. R. Rev. 580—14 L. R. Rev. 905—XV U. D. 18—*Muneshwar Baksh Singh v. Gur Prasad Singh*, I U. D. 335, 353.

<sup>4</sup> *Sheo Naik Rai v. Munesar*, B. R. 2 of 1930.

<sup>5</sup> B. R. 8 of 1933—15 L. R. Rev. 134.

<sup>6</sup> *Tulsia v. Harakh Chand*, 11 L. R. Rev. 303—XI U. D. 155—14 R. D. 543.

<sup>7</sup> *Khelawan v. Sat Ram*, XII U. D. 14—15 R. D. 143.

<sup>8</sup> *Manraj Singh v. Jang Bahadur Singh*, XV U. D. 550—16 L. R. Rev. 137.

<sup>9</sup> *Tirjugi Narain v. Durga Singh*, XV U. D. 536—16 L. R. Rev. 99.

<sup>10</sup> *Salig Ram v. Ghana Ram*, XIX U. D. 137—1938 R. D. 292.

necessary parties to the proceedings, to be added after such period has expired, and the notice shall be as effectual in respect of all persons so added as if they had been included in the notice filed within the prescribed period.

(2) Every notice under sub-section (1) shall state the ground on which ejectment is applied for and inform the tenant—

(a) that if he desires to dispute the ejectment he must contest the notice within thirty days of its being served on him, and

(b) that if within thirty days of the service of the notice he appears and admits his liability to ejectment he will not be liable for any costs.

1. The section reproduces in effect section 87 of the Act of 1926, omitting provisos II and III to sub-section (1), and clauses (a) to (c) of sub-section (2) because section 161 already provides for the matters contained in these clauses *Cf.* sections 54, 55 Oudh Act.

2. **Between.**—An application made before 1st July or after 30th September will be either too premature or too late.

If the 30th of September is a holiday, may an application be made when the Court re-opens in October?<sup>1</sup>

This does not lay down a rule of limitation,<sup>2</sup> so as to bring in the sections of the Limitation Act extending time.

3. **Notice**—Local custom cannot override the necessity of notice<sup>3</sup> Should be filed in duplicate. Subsection (2) read with section 161 gives the form of notice. All the clauses of section 161 and section 176 (2) should be complied with.

Since a notice must be in writing, some signature is necessary, though the section does not expressly require it. An unsigned copy of notice is not bad.<sup>4</sup>

*The name etc. of the landlord* (as required by section 161) is to indicate the person applying, so that the tenant may see whether he is entitled to apply, see note 2 to section 175, for such persons.

*The name and description etc. of the tenant* (*Vide* section 161).—This intimates to the person addressed as to who the tenant is, see note 3 to section 175.

<sup>1</sup> See *Oodam v. Bahumal*, B. R. 7 of 1904; *Contra*, *Jit Singh v. Ganga Prasad*, VIII U. D. 57=8 L. R. Rev. 228=1927 R. C. 256=11 R. D. 397.

<sup>2</sup> *Sursati v. Bharat Rai*, IV U. D. 44=6 Rev. and Cr. L. J. 1362, 87=1 L. R. Rev. 145=2 U. P. L. R. 33=555 I. C. 926=6 R. D. 128; *Prag Narain v. Kanchan Singh*, VI U. D. 100=5 L. R. Rev. 126=1924 R. C. 90=9 R. D. 514 In any case, proviso I renders *Janki v. Muh. Abdul Jalil Khan*, B. R. 2 of 1926=12 Rev. and Cr. L. J. 179=7 L. R. Rev. 256=VII U. D. (B. R.) xxiii, obsolete.

<sup>3</sup> *Inamullah v. Mir Jan*, B. R. 6 of 1886.

<sup>4</sup> *Bhima v. Din Dayal*, III U. D. 273.

*Description of the holding.*—(Vide section 161) Notice as to a part of a holding is bad.<sup>1</sup>

Where a plot wrongly entered in a lease is not really a part of the holding, omission to specify does not invalidate a notice.<sup>2</sup> If the landholder has once treated the separate holdings of a tenant as one, by including all of them in one suit for arrears of rent, he cannot subsequently issue a notice in respect of some only of those holdings.<sup>3</sup> A mistake in area is not a material defect.<sup>4</sup>

Where a tenant holds in respect of some only of which notice can be given, the notice must specify the different kinds of tenures.<sup>5</sup> The court may, before ejecting, demarcate the area,<sup>6</sup> so if he holds underproprietary and other lands from which ejectment is sought, and the two are not demarcated the notice is bad.<sup>7</sup> Where the area is of the total holding but the numbers given are only those of plots originally held and not of plots which the tenant took subsequently, the notice was held to be bad.<sup>8</sup> Where a tenant had a separate holding at a certain rent and another holding jointly with another person, the rent of which, to the extent of his share, was included in that of his separate holding, without any specification of amount a notice in respect of the separate holding is bad, as being for part only of his holding.<sup>9</sup>

A proceeding for ejectment need not comprise the whole of a tenant's holding, but may be for any plot separately assessed with rent.<sup>10</sup> And a proceeding to eject a non-occupancy tenant may be confined to the land in respect of which such tenancy exists, although he holds such land and others over which he has acquired rights of occupancy at a lump rent.<sup>11</sup>

Where under section 14 of the Act of 1901, the Court declared a smaller out of a larger area in possession of a tenant to be occupancy land but did not demarcate it by boundaries, the Board ordered ejectment from the non-occupancy area, as the defect arose from fault of the Court.<sup>12</sup>

<sup>1</sup> *Tulshi Dei v. Mahabir*, I U. D. 331=27 I C. 382 ; *Ganeshi v. Court of Wards*, III U. D. 273=4 R. D. 99 ; *Birwa Mahnon Estate v. Bala Prasad*, IV U. D. 353=6 R. D. 544.

<sup>2</sup> *Purbi Din v. Rameshar Baksh Singh*, III U. D. 519.

<sup>3</sup> *Tulsa Dei v. Mahabir*, I U. D. 331=1 O. L. J. 722=27 I. C. 382.

<sup>4</sup> *Lalta Singh v. Special Manager*, 11 L. R. Rev. 379=15 R. D. 24.

<sup>5</sup> *Radha Madho v. Jagwi*, II U. D. 482.

<sup>6</sup> *Parmeshari v. Mahabir*, III U. D. 203=4 R. D. 50.

<sup>7</sup> *Bhagwati Prasad Singh v. Ajudhia Estate*, III U. D. 315=II U. D. 393=3 R. D. 282.

<sup>8</sup> *Surajbali v. Nanpara Estate*, II U. D. 621=2 O. L. J. 712=33 I. C. 168.

<sup>9</sup> *Kunj Behari v. Amaresh Bahadur Singh*, II U. D. 654=2 O. L. J. 743=33 I. C. 263.

<sup>10</sup> *Karamat Ali v. Bihari Lal*, B. R. 3 of 1887.

<sup>11</sup> *Guput Rai v. Bisheshwar Rai*, B. R. 8 of 1892.

<sup>12</sup> *Nathwa v. Dalpat*, III U. D. 390=4 R. D. 205.

The notice must be clear and specific and must specify the holding to which it belongs.<sup>1</sup>

But the non-occupancy part must be specified,<sup>2</sup> and demarcated<sup>3</sup> or be distinguishable from the map and village records.<sup>4</sup>

The fact that at the date of the notice no boundaries dividing the plot from neighbouring plots are given does not invalidate it when the area in which tenancy rights exist is a definite part of the plot.<sup>5</sup>

Where at a partition a *mendh* between two plots had been erected, and the directions of the plots were known the mere partial breaking up of the *mendh* was no bar to ejectment.<sup>6</sup>

In *Masudunnissa v. Umda*,<sup>7</sup> one member opined that non-demarcation was no bar to a suit but was to ejectment under a decree. The other member did not agree with this.

Notice could not be cancelled in respect of all the plots because certain fractions of a very few small plots had not been marked off in site.<sup>8</sup>

The plot from which ejectment is sought should be definitely bounded and described accurately,<sup>9</sup> but if it is not, an error in the description may be corrected.<sup>10</sup> and the boundary clearly defined.<sup>11</sup>

Now it has been laid down that absence of demarcation on the spot is not a ground for refusing ejectment unless it can be shown that the land is not capable of demarcation or identification,<sup>12</sup> or that the matter

<sup>1</sup> *Janki v. Maharaja of Benares*, II U. D. 72.

<sup>2</sup> *Radha Madho Prasad v. Jagwi*, II U. D. 482.

<sup>3</sup> *Kali Charon v. Behari*, III U. D. 111=5 Rev. and Cr. L. J. 1=5 R. D. 518; *Parmeshwar v. Mahabir*, III U. D. 303; *Khunni Lal v. Sardar*, III U. D. 109=5 Rev. and Cr. L. J. 3=5 R. D. 513.

<sup>4</sup> *Raj Narain Rai v. Dip Narain Rai*, III U. D. 265=4 R. D. 89.

<sup>5</sup> *Guya Singh v. Raggha*, I U. D. 46

<sup>6</sup> *Lachmi Narain v. Kamta*, II U. D. 367.

<sup>7</sup> I U. D. 257.

<sup>8</sup> *Manohar Lal v. Jubraj Singh*, III U. D. 195.

<sup>9</sup> *Ram Prasad v. Malik Iytkhar Wali Khan*, II U. D. 28=4 R. D. 496=  
*Janki v. Maharaja of Benares*, II U. D. 72=4 R. D. 540.

<sup>10</sup> *Sheoraj Singh v. Koulhan Singh*, I U. D. 391.

<sup>11</sup> *Lekha v. Rustam Khan*, 1 L. R. Rev. 52=6 Rev. and Cr. L. J. 84=IV U. D. 8=6 R. D. 123.

<sup>12</sup> *Sami Nath v. Ram Rao*, V U. D. 35=1922 R. C. 17=3 L. R. Rev. 82=7 R. D. 59; *Chandra Shekhar v. Kanji Mal*, 4 L. R. Rev. 7=V U. D. 208=1922 R. C. 218=7 R. D. 405; *Jainti Prasad v. Mathura Singh*, 1923 R. C. 39, V U. D. 443=4 L. R. Rev. 415=7 R. D. 289; *Juthan v. Sittu*, 1922 R. Cr. 293=3 L. R. Rev. 139=4 U. P. L. R. 50=5 R. D. 102; *Sri Thakurji Maharaj v. Bhagwan Das*, V U. D. 553=4 L. R. Rev. 344=1923 R. C. 265=7 R. D. 342.

is not so clear that demarcation could be made in the execution department.<sup>1</sup>

Where a plot of land belongs to 3 mahals jointly, the owner of one mahal cannot eject unless demarcation has taken place.<sup>2</sup>

But if all the different owners sue simultaneously to eject, so that the tenant would be ejected from the entire land, no question of demarcation arises.<sup>3</sup>

Where a Civil Court has declared *A* to be a trespasser in respect of seven bighas out of the lands comprised in an occupancy holding, and the zamindar wishes to eject him from these bighas, he should get them demarcated before issuing notice.<sup>4</sup>

Ejectment from land means ejectment from the trees thereon<sup>5</sup>

A proceeding for ejectment of a mortgagee of a deceased occupancy tenant as non-occupancy tenant cannot be thrown out on the ground that the name of the deceased should first be expunged.<sup>6</sup> So when a patwari's entry is unauthorised.<sup>7</sup>

Land encroached upon by a tenant and added to his holding, until it has by long user become a part of his holding<sup>8</sup> may be treated by him as part of it and a notice of ejectment may comprise such land;<sup>9</sup> but if occupancy land is held with the land encroached upon, the former must be demarcated from the latter before ejectment.<sup>10</sup>

Where part of the land in a holding recorded as a single holding is *marwat* and part is not and the two portions are identified, a single notice for the entire holding is not irregular although it would not affect the *marwat* part.<sup>11</sup>

<sup>1</sup> *Makhan Lal v. Binda*, V U. D. 178—1922 R. C. 300—3 L. R. Rev. 453—8 R. and Cr. L. J. 309—4 U. P. L. R. 114—6 R. D. 153, see *Brij Kishore v. Parbati*, VI U. D. 476.

<sup>2</sup> *Gopal Das v. Lachman*, 3 Rev. and Cr. L. J. 274—II U. D. 577; *Parshotam Ras v. Ram Karan Singh*, II U. D. 558; *Mahabir Prasad v. Bachan Singh*, II U. D. 292—3 R. D. 131; *Lakhpati v. Jugraja*, 9 Rev. and Cr. L. J. 232—1923 R. C. 112—V U. D. 449—4 L. R. Rev. 213—7 R. D. 254; *Munir Khan v. Gur Dayal*, XVIII U. D. 9—1937 R. D. II.

<sup>3</sup> *Kashi Ram v. Ram Jas*, B. R. 15 of 1925—VI U. D. cii—11 Rev. and Cr. L. J. 247—6 L. R. Rev. 243—1926 R. C. 491.

<sup>4</sup> *Puran v. Hamiduddin*, 4 Rev. and Cr. L. J. 95—III U. D. 119—5 R. D. 527.

<sup>5</sup> *Mahadiya v. Dakhini*, IV U. D. 32, 147—1 L. R. Rev. 85—6 R. D. 124.

<sup>6</sup> *Haidri v. Shakur*, IV U. D. 227—6 R. D. 428

<sup>7</sup> *Jagan Nath v. Ram Prasad*, IV U. D. 229—6 R. D. 426.

<sup>8</sup> *Nihal Ahmad v. Kalka Singh*, B. R. 2 of 1912; *Brij Bahadur v. Baldeo*, II U. D. 528—3 R. and Cr. L. J. 49.

<sup>9</sup> *Muhammad Ali Khan v. Sarnam Singh*, B. R. 28 of 1891.

<sup>10</sup> *Puran v. Hamiduddin*, III U. D. 119—4 Rev. and Cr. L. J. 95.

<sup>11</sup> *Narendra Bahadur Singh v. Inder Bahadur Singh*, III U. D. 468.

*Rent of the holding.*—As to when rent is not specified, see *Udit v. Muhammad Mehdi Ali Khan*.<sup>1</sup>

Where a notice was issued in respect of certain plots recorded at a lump rent, some of the plots being held under a *shankalapnama*, the notice was held good as regards the plots not so held<sup>2</sup> so where occupancy rights existed over some of the plots.<sup>3</sup>

A mere accidental wrong entry of rent does not invalidate a notice,<sup>4</sup> if it does not in any way prejudice the tenant.<sup>5</sup> An erroneous amount entered as rent by mistake, *e. g.*, 43 for 34, will not invalidate a notice.<sup>6</sup>

**4. Joint holding.**—Where a holding is held jointly by two or more persons all such persons constitute the tenant and should, generally speaking, be served with notices of ejectment.

Where a holding is that of a joint Hindu family, and the names of the managers of the family are alone recorded as tenants, a notice to the managers is sufficient.<sup>7</sup> See note 4 to section 38 especially at page 272. A holding will be deemed to be that of a joint family when it has descended from a common ancestor,<sup>8</sup> or has been acquired by joint funds, or, to the knowledge of the landholder, has been thrown into the common fund. Otherwise a holding acquired by and standing in the name of a member,<sup>9</sup> *e. g.*, the manager,<sup>10</sup> will be considered his alone.

Where a holding descends to two sons as heirs of their father, and the name of one of them alone is recorded, a notice to him alone is sufficient.<sup>11</sup> The above case in III U. D. 32 was distinguished in *Sukha v. Sujan Kuar*,<sup>12</sup> where the name of the widow of a Mahomedan who

<sup>1</sup> 2 O. L. J. 298—29 I. C. 656.

<sup>2</sup> *Court of Wards v. Suraj Bali*, 1 O. L. J. 236—24 I. C. 778 ; *Bhan Partab Sahai v. Ram Lal*, B. R. 10 of 1893.

<sup>3</sup> *Gopal Rai v. Bisheshar Rai*, B. R. 8 of 1892

<sup>4</sup> *Sheoraj v. Partab Bahadur*, I U. D. 286—2 O. L. J. 112—28 I. C. 211.

<sup>5</sup> *Raghunandan v. Ahbaran Singh*, IV U. D. 333—6 R. D. 526.

<sup>6</sup> *McGiveran v. Hurkhoo Singh*, 18 W. R. 202 ; *Wooma Churn Dutt v. Grish Chander*, 17 W. R. 32 ; *Sagur Mundal v. Mahendra Nath*, 25 W. R. 28 ; *Radha Ballub v. Beharee Lal*, 12 W. R. 537.

<sup>7</sup> See *Mitan Singh v. Phul Kunwari*, B. R. 4 of 1918—III U. D. 7.

<sup>8</sup> *Sheo Mangal Lal v. Muh. Masum*, II U. D. 557.

<sup>9</sup> *Sheo Mangal Lal v. Muh. Masum*, II U. D. 557.

<sup>10</sup> *Qudrat Ullah v. Prem*, B. R. 5 of 1918—III U. D. 9.

<sup>11</sup> *Jhumak Lal v. Suraj Prasad*, III U. D. 32—II U. D. 603—3 O. L. J. 211—34 I. C. 711 ; *Rameshar v. Talib Ali*, V U. D. 337—4 L. R. Rev. 63.

<sup>12</sup> IV U. D. 410—5 R. D. 170.



had left daughters also as heirs, was alone recorded, and it was held that notice to her alone was not adequate. Where the name of one heir alone has been recorded for a large number of years and rent has been realised from him alone, notice to him alone is good.<sup>1</sup> In *Abbas Bandi v. Sarju*,<sup>2</sup> a notice issued to the recorded heir was not considered adequate in the presence of other heirs (Hindus).

It has also been held that where the name of one of several joint holders of a holding has alone been recorded for a number of years, notice to him alone is not bad.<sup>3</sup>

*Defective notice.*—Provided that the notice is not so defective as to be likely to prejudice the tenant, it should not be deemed void because it is not in the exact words required by law,<sup>4</sup> or because there is a trifling irregularity, such as an error in name or designation of either parties or a misstatement as to the area of the land otherwise sufficiently defined, or a clerical omission,<sup>5</sup> or an omission to state the area, or the entry of other land not held by the addressee as tenant.

**5. Joinder of names.**—The proviso removes a difficulty which existed before, and is according to the decisions arrived at.<sup>6</sup>

The case of *Sursati v. Bharat Rai*,<sup>7</sup> was followed in *Santu v. Hazari Lal*. There, a suit for ejectment was filed against several joint tenants, including A. A had as a matter of fact died a few days before the institution of the suit. The suit was stayed and when it came up for trial the plaintiff applied to have the name of A's heir substituted for A. This was after 7th September, 1926. The substitution was made, the court finding sufficient reason for extending the period of limitation. The Commissioner held that the heir not being a party on 7th September 1926, had become a statutory tenant. The Board reversed this, as the suit was filed within time and against the recorded tenants, and the heir's name was not recorded. He was a minor under the guardianship of one of the other defendants. The Board held that his name could be brought on

<sup>1</sup> *Tribhuvan Dutt v. Muh. Abdul Hasan Khan*, II U. D. 656—2 O. L. J. 746.

<sup>2</sup> I U. D. 220—1 O. L. J. 531—26 I. C. 91.

<sup>3</sup> *Prag Narain v. Shiam Lal*, XI U. D. 100.

<sup>4</sup> *Ryesunnissa v. Bydo Nath*, 12 W. R. 537.

<sup>5</sup> *Cf. Raza Ali v. Ramanand*, 14 W. R. 474.

<sup>6</sup> *Rup Ram v. Kure Singh*, II U. D. 511—3 R. and Cr. L. J. 360 ; *Sursati v. Bharat Rai*, IV U. D. 44 ; *Mutsaddi Lal v. Gajola*, VI U. D. 8—1923 R. C. 261—5 L. R. Rev. 58—8 R. D. 66 ; *Angan Lal v. Hori Lal*, V U. D. 272—9 Rev. and Cr. L. J. 84—4 L. R. Rev. 28—1922 R. C. 387—7 R. D. 362. *Contra, Janki v. Muh. Abdul Jalil*, B. R. 2 of 1926—7 L. R. Rev. 256—1926 R. C. 322.

<sup>7</sup> IV U. D. 44.

<sup>8</sup> X U. D. 178—13 R. D. 422.

the record and the case proceeded with, as if he had been impleaded from the very first.

It was also held that addition of plots omitted in the first instance did not bring in the bar of limitation as to those plots <sup>1</sup>

Where a zamindar desires to eject a subtenant, the tenant is a necessary party,<sup>2</sup> unless his death is proved.<sup>3</sup> Where the recorded tenant-in-chief is a mere dummy, the zamindar cannot get rid of the recorded subtenant (the real tenant) by ejecting the nominal tenant. Where a zamindar gave a lease to a female relation living with him, the land being occupied by others, the question whether these others are subtenants or tenants-in-chief depends upon whether the lease was *farzi* or *benami* or whether they recognised the lessee as tenant-in-chief.<sup>5</sup> When actual cultivators paid rent to the recorded tenant, did not challenge the entry for a number of years and laboured under no misapprehension as to their status, they could not on the death of the recorded tenant claim occupancy rights based on long possession.<sup>6</sup>

In a proceeding by a mortgagee in possession the mortgagors may be impleaded.<sup>7</sup>

Where *A* applies for ejectment but at the date of the suit, *B*, though not entered in the khewat, has obtained possession of a share against *A* through a Civil Court, *B* is a necessary party although an appeal may be pending from the Civil Court decree.<sup>8</sup>

Where a person whose name is entered in the village papers is the manager of a holding and usually pays rent, his co-sharers need not be impleaded,<sup>9</sup> and an order of ejectment made as against him binds the others also.<sup>10</sup>

6. **Proceeding is admission of status of tenant.**—A proceeding for ejectment as a tenant is an admission that relation of landholder and tenant exists between the parties. see notes to section 29 at pages 190-91.

7. **When suit may be brought in Civil Court.**—The provisions as to ejectment under this Chapter apply only to suits and proceedings

<sup>1</sup> *Prabhu Dial v. Khali*, II U. D. 483

<sup>2</sup> *Fakhrunnissa v. Imdad Ali*, I U. D. 21.

<sup>3</sup> *Raja Singh v. Pargan Singh*, I U. D. 362=32 I. C. 586.

<sup>4</sup> *Raghubir Prasad v. Ram Jwan*, V U. D. 448=4 L. R. Rev. 212=1923 R. C. 108=7 R. D. 259.

<sup>5</sup> *Sahadeo Rai v. Bhagwati*, V U. D. 457=4 L. R. Rev. 227=1928 R. C. 117=7 R. D. 272.

<sup>6</sup> *Baldeo v. Shankar Nath Singh*, XVI U. D. 609.

<sup>7</sup> *Nokhai v. Thakur Din*, II U. D. 521.

<sup>8</sup> *Musa v. Lachmi Ram*, III U. D. 466=2 U. P. L. R. 163=4 R. D. 278.

<sup>9</sup> *Data Prasad v. Kaniz Fatima*, IV U. D. 499=8 Rev. and Cr. L. J. 12=2 L. R. Rev. 210=3 U. P. L. R. 92=5 R. D. 276

<sup>10</sup> *Muhammad Khan v. Karan Singh*, X U. D. 218=13 R. D. 823=14 R. D. 89.

between landholders and tenants. A suit to eject a person who is not a tenant may be brought in a Civil Court, *e. g.*, a suit against a person claiming to be the mortgagee of an occupancy tenant who has died prior to the institution of the suit,<sup>1</sup> or a person who says that he is not the plaintiff's tenant,<sup>2</sup> or against a person who having been duly ejected refuses to vacate the land,<sup>3</sup> or against a lessee of the mortgagee.<sup>4</sup> See section 180. But the landholder has the option of suing either in a Civil or Revenue Court, when an occupier claims proprietary rights.<sup>5</sup>

The widow of a grove-holder sold a part of it to A who built a house on it, without the consent of the landholder. The latter cannot eject A under this section as the relation of landlord and tenant does not exist between the parties; a suit in a Civil Court will not be governed by the one year's limitation.<sup>6</sup>

**8. Joinder of holdings.**—Fields falling in different mahals cannot constitute a holding. Hence one proceeding to eject from such fields is bad,<sup>7</sup> so a suit in respect of different holdings,<sup>8</sup> held by different tenants. It was held that there was nothing in the Oudh Act prohibiting a single notice of ejectment in respect of a number of holdings of one and the same tenant.<sup>9</sup>

**177.** On an application being made in accordance with the provisions of section 176, a copy of the notice accompanying such application shall on payment of the prescribed fee be served on the tenant in the manner prescribed in section 161.

The section reproduces in effect section 88 of the Act of 1926. The proviso has been transferred as the second proviso to section 161 (2). The service has to be in the manner prescribed by section 161. *Cf.* section 55 (2) of the Oudh Act.

<sup>1</sup> *Mahabir v. Sheo Prasad*, 16 All. 325=14 A. W. N. 98.

<sup>2</sup> *Muhammad Zaki v. Hasrat*, 2 A. W. N. 61.

<sup>3</sup> *Muhammad Ibrahim v. Diwan*, 16 A. W. N. 156.

<sup>4</sup> *Ramchand v. Raj Hans*, 3 A. L. J. 547.

<sup>5</sup> *Lal Singh v. Sujan Singh*, 1923 R. C. 5=V U. D. 364=4 L. R. Rev. 122=9 R. and Cr. L. J. 139=6 R. D. 20.

<sup>6</sup> *Madho Singh v. Sheo Baksh*, II U. D. 756

<sup>7</sup> *Daya Ram Singh v. Bhiki*, 1922 R. C. 594=V U. D. 411=7 R. D. 221.

<sup>8</sup> *Hira Lal v. Hoti Lal*, 10 Rev. and Cr. L. J. 171, 201=22 A. L. J. 459=VI U. D. (H. C.) 111=5 L. R. Rev. 155=1924 R. C. 170=1924 A. I. R. All. 720=79 I. C. 560=9 R. D. 392; *Badri Narain v. Mahesh*, IV U. D. 687=3 L. R. Rev. 197=5 R. D. 96.

<sup>9</sup> *Raghovendra Partab Suki v. Ali Afzal Khan*, B. R. 12 of 1934=XVI U. D. 8; *Badri Narain v. Mahesh*, IV U. D. 687; but see *Kalka Singh v. Asghar Husain*, V U. D. 113.

If the tenant raises an objection contesting notice, and on the objection coming up withdraws his objection, he does not become a trespasser until the landholder actually ejects him.<sup>1</sup>

Notice must be served on the tenant and not sent by post, and on each of several co-tenants or heirs of a deceased tenant.<sup>2</sup> Personal service is not essential,<sup>3</sup> but a notice served not on the tenant but on persons interested in the tenancy,<sup>4</sup> or the tenant's representatives<sup>5</sup> or agent<sup>6</sup> is not duly served, nor service by affixation without an effort to ascertain the tenant's whereabouts.<sup>7</sup>

**178.** (1) If a tenant to whom a notice is issued under section 177 appears within thirty days of the service of such notice and admits his liability to ejectment, the court shall pass an order for his ejectment, but he shall not be liable for any cost incurred by the applicant.

(2) If on the expiry of thirty days from the service of such notice the tenant has not appeared the court shall pass an order for his ejectment.

The section reproduces in effect section 89 of the Act of 1926. Cf. section 59, Oudh Act, as to subsection (2).

**179.** (1) If within thirty days of service of a notice under section 177 the tenant appears and contests his liability to ejectment, the court shall forward the proceedings for disposal to the assistant collector in charge of the sub-division.

(2) In such case the application under section 176 shall be deemed to be a plaint and the case shall proceed as a suit. The landholder shall within a time to be fixed by the court, deposit the balance of court-fee due from him, failing which the suit shall be dismissed.

1. The section reproduces in effect section 92 of the Act of 1926. Cf. section 56 of the Oudh Act.

2. Can a tenant contest on the ground that the notice was not served on him as required by the Act?

<sup>1</sup> See *Jag Mohan v. Ram Kishan*, XVII U. D. (H. C.) 207—1936 R. D. 400.

<sup>2</sup> *Sukha v. Sujan Kunwar*, IV U. D. 40—5 R. D. 170.

<sup>3</sup> *Bedi v. Rukmangad*, IV U. D. 210—6 R. D. 410

<sup>4</sup> *Mothora Nath v. Khetter Nath*, 2 W. R. Act 52.

<sup>5</sup> *Huro Mohan v. Gotuck*, 12 W. R. 365

<sup>6</sup> *Chunder Monee v. Dhuronedhar*, 7 W. R. 2.

<sup>7</sup> *Munshi Singh v. Jwala Prasad*, IX U. D. 120—9 L. R. Rev. 295—12 R. D. 669.

The court is bound to enquire the plea raised.<sup>1</sup> Omission to contest a notice of ejectment will not preclude the tenant from suing under section 183 if he considers that he was wrongfully ejected.<sup>2</sup>

The section provides for an enquiry as to the liability to ejectment of a tenant who appears within 30 days of the service of notice under section 177 and contests his liability.

**3 Within thirty days.**—The appearance must be within 30 days of service of a notice under section 177. Suppose the tenant did not appear within 30 days, and the court did not pass an *ex parte* order for ejectment on the expiration of 30 days, and the tenant appears to contest the notice before an order for his ejectment is made. Will he be heard within sub-section (1)? It is submitted, he will.

**4. Contests his liability to ejectment.**—This he can do on various grounds, *e. g.*, (a) that he is not the tenant of the applicant, (b) that he himself is the tenant, and not a subtenant as alleged by the applicant, (c) that he is not a tenant from year to year, or under a lease, or for a period which has expired or will shortly expire.

As to (a), see notes to section 175, as to (b), see note 5 to section 175.

Where a person, whose title to a tenancy was denied by the *taluqdar* and the *taluqdar's* claim was examined and accepted by the court, issues a notice of ejectment as a subtenant to a person who denies any connection with the land, the alleged subtenant may contest the notice on the ground that he is not the subtenant of the person giving notice.<sup>3</sup>

As to (c), the plea may be that he is a tenant of one of the classes (a) to (f) mentioned in section 21, the burden of proof being on him, or that he holds under a contract, lease, or transaction under the terms of which he is not liable to ejectment at the present moment. See note 5 to section 175. A tenant may also contest his liability on the ground that the notice issued under section 176 was defective, see note 3 to section 176.

**5. Duty of Court.**—Courts must decide a question of tenant's status finally, and are not bound by previous inconclusive decisions in ejectment cases which merely found that the tenant was something more than an ordinary tenant and did not determine what his actual status was.<sup>4</sup>

It is the duty of Revenue Courts to find definitely what the status of a tenant is.<sup>5</sup>

<sup>1</sup> *Muh. Nawab Ali Khan v. Mathra*, B. R. 4 of 1905.

<sup>2</sup> *Jasoda v. Mohamed Ibrahim*, XIV U. D. 507.

<sup>3</sup> *Amir Khan v. Nannha*, XV U. D. 513=16 L. R. Rev. 110.

<sup>4</sup> *Mukhtarlkhuda v. Bakhtawar Khan*, B. R. 8 of 1918.

<sup>5</sup> *Dhaurwa Estate v. Chaitan Singh*, B. R. 17 of 1910; *Abid Ali v. Shah Ali Husain*, II U. D. 227; *Shafiquzzaman v. Tasaddug Husain*, II U. D. 228; *Mukhtarlkhuda v. Bakhtawar Khan*, B. R. 8 of 1918=7 O. L. J. 669=60 I. C. 703; *Bhagwan Baksh Singh v. Ram Ratan*, 5 L. R. Rev. 106 (O.)=VI U. D. 45; *Bhagwan Baksh Singh v. Mathura*, 5 L. R. Rev. 108 (O.)=VI U. D. 146=11 O. L. J. 656=9 R. D. 539; *Ajodhia Prasad v. Udai Raj*, XVII U. D. 42=1936 R. D. 80.

If a *prima facie* case of under-proprietary rights is not made out the court must find definitely as to the kind of tenancy. A finding that the plaintiff is something more than a mere tenant-at-will is not legal.<sup>1</sup>

The person setting up a heritable lease or occupancy rights must prove it,<sup>2</sup> unless there is an estoppel against the landlord as in *Ram Prasad v. Maharaj Din*.<sup>3</sup>

Where rights superior to those of statutory tenants were claimed, the court should, before adjudication, make a complete enquiry to find out whether a *prima facie* case of under-proprietorship or a complete case of occupancy rights has been made out, or whether the tenant was liable to ejectment.<sup>4</sup>

A previous decision in an ejectment proceeding between the defacto proprietor (afterwards held to be a tenant), and an occupier of land, that he held as a *birt*-holder, though it may not be *res judicata*, is enough to establish a *prima facie* claim of *birt* rights.<sup>5</sup>

Where a *dasaund* holder claiming to hold a village under a *birt patra* did not put forward his claim in a previous litigation, and has executed a *kabuliat* with a progressive rental, this is inconsistent with the idea that he was in cultivating possession as a *birtdar*.<sup>6</sup> So where the *dasaund* holder did not in his suit at the settlement put forward a claim to the possession of the village, but only claimed the *dahaik*, and a share of the fruits, and showed that cash payments on both accounts had been made in the past by the *talugdhar*.<sup>7</sup>

Under-proprietary right means the right to hold the land in perpetuity for a heritable and alienable estate at a fixed rent, subject to a revised assessment.<sup>8</sup>

Sub-settlement under the Sub-settlement Act did not create any new right or privilege over and above what was created by a decree finding that a person was possessed of under-proprietary right. The object of the Act was to correct and rectify what had been hastily and imperfectly or loosely done, and to secure that no person should enjoy under-proprietary rights who could not establish his claim in the manner prescribed by the rules laid down there.<sup>9</sup>

<sup>1</sup> *Partab Bahadur Singh v. Ranjit Singh*, II U. D. 132.

<sup>2</sup> *Bijai Bahadur Singh v. Jagannath*, III U. D. 170.

<sup>4</sup> III U. D. 182.

<sup>5</sup> *Jagadamba Singh v. Bhagwan Baksh Singh*, II U. D. 139.

<sup>6</sup> *Parbhu v. Maharajah of Balrampur*, II U. D. 491.

<sup>7</sup> *Sahab Din v. Muhammad Abdul Hasan Khan*, I U. D. 276.

<sup>8</sup> *Muhammad Abdul Hasan Khan v. Kelo Singh*, I U. D. 277.

<sup>9</sup> *Maheshwar Prashad v. Muhammad Ewas Ali Khan*, 31 All. 393=12 O. C. 293, (P. C.)

<sup>9</sup> *Maheshwar Prashad v. Muhammad Ewas Ali Khan*, 31 All. 394=12 O. C. 293, (P. C.)

The fact that a person is recorded as a tenant and not as an under-proprietor will not proclude him under section 34 (5), Land Revenue Act, from setting up and establishing a *prima facie* case.<sup>1</sup>

Where notice to eject is issued to A as thekadar and he sues to contest it as under-proprietor or occupancy tenant, the court should not dispose of the suit on a finding that A has proved that he is not a thekadar. It must find as to the under-proprietory or occupancy rights set up.<sup>2</sup>

Where a notice by B to eject A describes him as sub-tenant and A claims to be the tenant-in-chief, the zamindar should be impleaded.<sup>3</sup>

Where proprietary or under-proprietary rights are set up in answer to notice, application or suit for ejectment, all that the revenue court need find, to dismiss the case, is that the defendant is not liable to ejectment as alleged by the plaintiff. It is not competent to decide the question of title conclusively so as to prevent the defeated party from suing in a Civil Court to establish the contrary.<sup>4</sup>

6. Ejectment may take place from land held *bila lagan* with other lands.<sup>5</sup>

7. The suit contemplated is No. 17 of Group B of the Fourth Schedule. It is triable by an Assistant Collector of the first class with a right of appeal to the Commissioner. The Assistant Collector must be in charge of the sub-division. The court fee is according to the amount of rent payable by the tenant. There is no limitation for the suit.

### *Ejectment of person occupying land without title*

**180. (1)** A person taking or retaining possession of a plot or plots of land otherwise than in accordance with the provisions of the law for the time being in force and without the consent of the person entitled to admit him as tenant shall be liable to ejectment under this section on the suit of the person so entitled, or when the joint consent of more than one person is required on the suit of any one or more of such persons, and also to pay damages, which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants.

(2) If no suit is brought under this section or a decree obtained under this section is not executed the person in possession shall on the expiry of the period of limitation prescribed for

<sup>1</sup> *Balbhadar Singh v. Asot Fatima*, B. R. 1 of 1906.

<sup>2</sup> *Bhagwan Baksh Singh v. Jang Bahadur*, 5 L. R. Rev. 123 (O.)=VI U. D. 160; *Bhagwan Baksh Singh v. Bishunath Singh*, 6 L. R. Rev. 21 (O.)=VI U. D. 407.

<sup>3</sup> *Ram Manorath v. Sheo Dutt* 6 L. R. Rev. 22 (O.)=VI U. D. 407.

<sup>4</sup> *Mahabir Singh v. Court of Wards*, II U. D. 653.

<sup>5</sup> *Kausilya v. Janki Bax*, II U. D. 469.

such suit or for the execution of such decree, as the case may be, become a hereditary tenant of such plot or plots.

1 With some important changes the section reproduces section 44 of the Act of 1926, and corresponds to section 34 of the Act of 1901 and section 127 of the Oudh Act.

The words "otherwise than in accordance with the provisions of the law for the time being in force" displace "in contravention of the provision of this Act" the words "without the consent of the person entitled to admit him as tenant" displace "without the consent of the landholder." The words "Under the section on the suit of the person so entitled" displace "on the suit of the landholder" and the words "hereditary tenants" displace "statutory tenants" The underlying principle remains the same.

The Act as passed in 1939 had the words "without the *written* consent"; the word *written* has now been removed by the United Provinces Tenancy (Amendment) Act, I of 1940.

2. This section provides a remedy against trespass, but does not take away the landlord's right to recognise the trespasser as a tenant. The difference in procedure will be that if the landholder does not elect to recognise a trespasser as tenant, he will have to frame his suit as for trespass claiming ejectment and damages.

The plaintiffs, who were in possession of certain plots of land as co-sharers, had sown crops on those plots. The defendants uprooted the crops and took possession of the plots at the instigation of and in collusion with two of the other co-sharers. The suit of the plaintiffs for possession and damages lies in a Civil Court and does not come within the purview of section 180<sup>1</sup>

So long as a widow lessor was alive, a reversioner could not attack a lease granted by her. Hence, limitation for a reversioner to challenge such lease and recover possession ran from her death.<sup>2</sup>

The High Court had held that a person who took possession of the land of another and cultivated it for more than the period of limitation without the coming into existence of the relation of landlord and tenant was in adverse possession and became owner by prescription.<sup>3</sup>

<sup>1</sup> *Rahmat v. Ambika Prasad*, 1936 A. L. J. 1359=1936 A. I. R. All 13=XVI U. D. 645=1935 R. D. 479.

<sup>2</sup> *Pitam Singh v. Liladhar Singh*, 1938 A. L. J. (B. R.) 8=XIX U. D. 96=1938 R. D. 181. Is this affected?

<sup>3</sup> *Nageshar Bharti v. Ram Narain Bharti*, 1930 A. L. J. 650=XI U. D. (H. C.) 179=11 L. R. Rev. 146=14 R. D. 336; *Niranjan Singh v. Mahabir Singh*, 1930 A. I. R. All. 845=11 L. R. Rev. 283=128 I. C. 820=14 R. D. 594; *Daulat Singh v. Sheo Nath*, 1924 A. I. R. All 211=X U. D. (H. C.) 142=10 L. R. Rev. 179=114 I. C. 890=13 R. D. 223 In any case the plaintiff's suit fails. *Tikam Singh v. Ram Singh*, XV U. D. 436=15 L. R. Rev. 672.



In another case also started under section 34 of Act II of 1901, (corresponding to the present section) it was held that where a person entered into occupation of land without the consent of the proprietors and with assertion of proprietary rights and 12 years had elapsed, he acquired ownership; but in respect of land of less than 12 years' occupation, he could be proceeded against under section 34 (corresponding to present section.)<sup>1</sup>

In one case a single judge negatived the right of a *riaya* to acquire *parti* land by adverse possession as against the landlord except where he had asserted proprietary rights.<sup>2</sup>

In *Deo Nandan Singh v. Jang Bahadur Singh*,<sup>3</sup> a member of the Board of Revenue held that under the Act of 1926 when a person had occupied the land of another for more than 12 years without payment of rent, he could not be dealt with under this section. but rent may be fixed under section 45 of the Act of 1926.

To acquire proprietary title by prescription, he must have set up title as proprietor.<sup>4</sup> Without the assertion of proprietary rights, the squatter will become only a hereditary tenant.

Where the trespass was against a tenant did the trespasser become the tenant of the landlord? It is submitted, not necessarily. The period of limitation was running against the tenant and not against the landlord.

On a consideration of the whole matter, it is submitted that where a trespass is against a landlord, the trespasser would after the period of limitation prescribed for the suit be classed as a hereditary tenant or a proprietor.

If the landholder sues an occupant as trespasser he should distinctly say so, or the judgment may be bad<sup>5</sup> unless the parties knew that the section was relied on,<sup>6</sup> and must prove it.<sup>7</sup> He should

<sup>1</sup> *Baij Nath Prasad v. Dharam Pal Singh*, 1930 A. I. R. All. 441—1930 A. L. J. 1032—XI U. D. (H. C.) 234—11 L. R. Rev. 180—14 R. D. 404.

<sup>2</sup> *Ram Phol Singh v. Bachchu Ram*, XI U. D. (H. C.) 242—11 L. R. Rev. 194—14 R. D. 367.

<sup>3</sup> X U. D. 54—10 L. R. Rev. 254—13 R. D. 452; so in *Saida Bibi v. Bhagwan Das*, XVI U. D. 46; *Man Singh v. Malkhan*, 1939 A. L. J. (B. R.) 29—XX U. D. 25—19 39 R. D. 872.

<sup>4</sup> *Bhagwan Das v. Shankar Prasad*, 14 A. L. J. (B. R.) 3—II U. D. 20—B. R. 1 of 1916—36 I. C. 520.

<sup>5</sup> *Jahangir v. Lachhi*, 8 Rev. and Cr. L. J. 198—1922 R. C. 223—3 L. R. Rev. 219—1922 R. C. 223—4 U. P. L. R. 47—5 R. D. 99.

<sup>6</sup> *Iqbal Ahmad v. Surajbali*, 1925 A. I. R. All. 210—6 L. R. Rev. 49—VI U. D. (H. C.) 409—1925 R. C. 34—82 I. C. 651—8 R. D. 414.

<sup>7</sup> *Pirthi v. Bhagwan*, 10 Rev. and Cr. L. J. 276—VI U. D. 176—5 L. R. Rev. 323—1924 R. C. 314—8 R. D. 171.

set up trespass against himself and not against another defendant in possession.<sup>1</sup>

Whereas, if the landholder elects to treat a trespasser as tenant, he should sue for fixation of rent.

3. A person includes a co-sharer who takes possession, without the lambardar's consent, of a holding vacated on a tenant's death<sup>2</sup> and the lambardar may sue him under this section. This was also the High Court view in a case where a tenant having been ejected by the lambardar, some of the plots were taken possession of by some of the co-sharers, and the lambardar was held entitled to sue them under the section.<sup>3</sup> So a co-sharer who takes possession of the land mortgaged by another co-sharer, which by custom or arrangement is his severalty, may be sued by the mortgagee under the section.<sup>4</sup> A mortgagee of the zamindar in possession under his mortgage is of course not a trespasser.<sup>5</sup>

Where one co-sharer puts a tenant in possession of vacant land and lets him cultivate it and it is not proved that under any custom he is not entitled to do so, the lessee is not a trespasser, and another co-sharer cannot sue him for ejectment and for damages without impleading the co-sharer who let the land.<sup>6</sup>

Where certain land is treated as the *sir* of a co-sharer, A, and is declared to be ex-proprietary tanancy land on a sale of his share, but is declared and recorded as *sir* of another co-sharer at a subsequent revision of records the latter cannot be ejected as a trespasser.<sup>7</sup>

A co-sharer who takes possession of some land not occupied by other co-sharers and cultivates it for some years without objection by the lambardar or co-sharers is deemed to occupy it with consent and cannot be proceeded against under this section.<sup>8</sup>

<sup>1</sup> *Amarjit Singh v. Thag Ram*, XX U. D. 108—1938 R. D. 836.

<sup>2</sup> *Sri Ram Chanderji v. Raghu Nath*, X U. D. 68—10 L. R. Rev. 299; *Marey v. Niadar Singh*, XVIII U. D. 338—1937 R. D. 324; *Byas Bahadur v. Chiranji*, 1938 A. L. J. (B. R.) 37—XIX U. D. 145—1938 R. D. 379; or on ejectment, *Hakoomat Singh v. Ram Charan*, XVI U. D. 29—1935 R. D. 426

<sup>3</sup> *Abdullah Khan v. Kanhaya*, 1930 A. L. J. 569—1929 A. I. R. All. 869—123 I. C. 106—13 R. D. 803.

<sup>4</sup> *Ramjidas v. Bakhtawar*, 14 L. R. Rev. 666—XIV U. D. 342.

<sup>5</sup> *Gur Dyal v. Moti*, XX U. D. 167—1939 R. D. 131.

<sup>6</sup> *Partab v. Gopi Ram*, XVI U. D. 494.

<sup>7</sup> *Mansab Ali v. Ganeshi Lal*, XVI U. D. 464.

<sup>8</sup> *Bal Singh v. Nawal Singh*, 1937 A. L. J. 807—1937 A. I. R. All. 688—XVIII U. D. (H. C.) 165—1937 R. D. 406.

See notes to section 183 as to cases where a co-sharer is dispossessed or a tenant is dispossessed by some only of the co-sharers. A person who can be proceeded against under the ejectment sections of the Act cannot be proceeded against under this section, *e. g.*, a Hindu widow, tenant for life, who has remarried, the remedy being provided by section 175<sup>1</sup> or a mortgagee, under an illegal mortgage, section 175 or section 171 providing the adequate remedy;<sup>2</sup> or a tenant who holds over after the termination of his lease.<sup>3</sup>

If the assignee of the lessee who had made a usufructuary mortgage and at the same time taken back the land on lease from the lessor mortgagee is in possession the landholder should bring his suit under section 171 and not under section 180, because it is the illegal act of his tenant which gives him the case of action.<sup>4</sup>

A person who has obtained a Civil Court decree for possession against the lambardar of a village must oust the defendant through the Civil Court, and cannot, if the lambardar continues to make collections, take action under this section.<sup>5</sup>

Where after issue of a notice under section 55, Oudh Act, to vacate a holding the landlord did not proceed under section 60 to have the tenant actually ejected, the tenant is not a person who can be proceeded against under this section.<sup>6</sup>

*Con.* A tenant, however, against whom the ejectment sections afforded the proper remedy, who has actually been ordered to be ejected by a competent court but refuses to vacate the holding, is a trespasser to be dealt with under section 180.<sup>7</sup>

*acti.* A tenant once ejected who being sued again for ejectment under section 180 pleads re-admission, has to prove his re-admission, and the mere fact that the first ejectment took place about 10 years before does not shift the onus.<sup>8</sup>

*Aisha Begam v. Kalloo*, XII U. D. 8=15 R. D. 147, *Contra*, *Raghubar Rai v. Somai*, 14 L. R. Rev. 934=XV U. D. 66

<sup>2</sup> *Ram Lochan v. Rakaba*, XXII U. D. 10=15 R. D. 149; *Jagar Nath Singh v. Sheo Mangal Singh*, XX U. D. 332=1939 R. D. 124.

<sup>3</sup> *Mehersia Begam v. Junki*, 10 L. R. Rev. 234=X U. D. 124=12 R. D. 830; *Nath Chandrawat v. Lallan*, X U. D. 143=10 L. R. Rev. 301=13 R. D. 760.

<sup>4</sup> *Ram Chandra Singh v. Misri Lal*, 1937 All. 958=1937 A. L. J. 204=1937 A. I. R. All. 790=1937 R. D. 532.

<sup>5</sup> *Suraj Bali v. Govinda*, I U. D. 231.

<sup>6</sup> *Haraj Kunwar v. Samad*, 1930 A. I. R. Oudh 220=XI U. D. (H. C.) 190=7 O. W. N. 330.

<sup>7</sup> *Bugli v. Nanu*, X U. D. 21=10 L. R. Rev. 35=13 R. D. 184.

<sup>8</sup> *Lalu Chaudhri v. Sakalraj*, XVII U. D. 5=1936 R. D. 22.

If there is a dispute as to whether a person sought to be ejected under section 180 was a tenant, the matter must be enquired into and decided before the section is applied.<sup>1</sup>

It is the duty of a revenue court to decide every question raised in a rent suit under the section, an adjndication of which is necessary for its decision.<sup>2</sup>

But if a person sued under section 180 is found in appeal not to be a trespasser, the appellate court may order his ejection under section 175 under the power given to it under Order 41, Rule 33, C. P. C.<sup>3</sup>

A person who, after a grove had ceased to exist, had taken a lease of certain trees standing on the land, which was also assessed to revenue, and also of the land for purposes of cultivation, cannot be proceeded against under this section.<sup>4</sup>

Where a plot, divided but not by metes and bounds, falls into two *khatas* of a *khewat* the owner of one of the *khatas*, to which only a small portion of the plot has been allotted, cannot sue the owner of the other *khatas* under section 180 as there is no case of trespass.<sup>5</sup>

A person occupying land under section 4 (3) of the Gorais Act of 1913 as non-occupancy tenant for 7 years and holding over after the expiration of those years is not a trespasser subject to action under section 180, but may be ejected under section 175.<sup>6</sup>

A landholder may treat a trespasser as his tenant and may sue to eject him as such in a revenue court.<sup>7</sup>

The fact that the trespasser has dug a well without objection by the landholder will not stop his ejection.<sup>8</sup>

A fraudulent transfer of his share or part thereof in favour of his sons does not confer any right or title against the auction purchaser thereof, to hold or cultivate the father's *sir* land. Hence it on such auction sale, the father does not claim ex-proprietary rights, the right to cultivate it goes to the purchaser and the sons in possession are trespassers as against him.<sup>9</sup>

**4 Taking possession.**—These words provide for simple squatting, *i. e.*, for cases where a person for the first time takes possession. The fact that the trespasser has not cultivated is immaterial.<sup>10</sup>

<sup>1</sup> *Narain Das v. Gangi*, X U. D. 199=13 R. D. 462

<sup>2</sup> *Talib Ali v. Basant Rai*, 7 O. C. 340

<sup>3</sup> *Bhagwan Din v. Beni Prasad*, XV U. D. 459.

<sup>4</sup> *Karamat Ali v. Mangoo Lal*, XVII U. D. 272=1936 R. D. 486.

<sup>5</sup> *Ram Bhargos v. Balwant Rai*, XI U. D. 103=14 R. D. 389.

<sup>6</sup> *Khaderoo v. Sri Nath*, XII U. D. (H. C.) 65.

<sup>7</sup> *Sri Ram Singh v. Baldeo Singh*, 13 L. R. Rev. 225 ; *Lal Singh v. Hasari Lal*, 17 O. C. 433 ; *Lalji v. Tilla Singh*, 8 Oudh 144.

<sup>8</sup> *Ram Kumar v. Chet Ram Singh*, 14 L. R. Rev. 368=XIV U. D. 459.

<sup>9</sup> *Bakhtawar v. Shankar Singh*, XVIII U. D. 194=1937 R. D. 265, relying on *Jwala Devi v. Jai Singh*, B. R. 6 of 1933

<sup>10</sup> *Sheo Pearey Lal v. Aughar*, IV U. D. 617=2 L. R. Rev. 156=7 R. and Cr. L. J. 271=5 R. D. 370.

Possession means actual and not construction possession. Hence the section cannot be used against a person who is not in actual cultivating possession of the land, but only collects rents of the sub-tenants on it and pays the rent to the zamindar.<sup>1</sup>

The person sued must be in actual possession of the land at the date of the suit.<sup>2</sup>

A trespasser does not become a tenant on fixation of rent for the period of his trespass.<sup>3</sup> Where an alleged tenancy is not proved, the person occupying is amenable to this section, unless his plea as to title is found to be *bona fide*.<sup>4</sup>

Where the relation of landlord and tenant does not exist between the parties and there is no agreement as to payment of rent, the landholder's remedy is a suit under section 180 and not a suit for arrears of rent.<sup>5</sup>

A person entered in the *khasra* as occupier of a plot of land may be taken to be its tenant, but where the evidence shows all the circumstances in which he is entered into possession, the entry cannot be accepted as proof of tenancy in the teeth of admitted facts and circumstances showing the contrary.<sup>6</sup>

A clause in a *wajib-ul-arz* that the land cultivated by a tenant in any Fasli year is to be measured and assessed to rent at the village rate cannot be held to authorise the breaking up of entirely new areas without consulting the zamindars and a tenant who does so break is a trespasser in respect of the area so broken.<sup>7</sup>

Cases of encroachment by tenants come under these words.<sup>8</sup> The landholder may elect not to eject, in which event he will be entitled to enhancement of rent and occupation as a tenancy will commence.<sup>9</sup> The landholder may elect to treat the tenant encroaching as a

<sup>1</sup> *Mahadeo Singh v. Pudar Singh*, IX U. D. 83=9 L. R. Rev. 260=12 R. D. 490; *Badri Bishal Singh v. Ram Autar*, 1927 A. I. R. Oudh 417=3 O. W. N. 370=VIII U. D. (H. C.) 117=7 L. R. Rev. 224=1926 R. C. 278; *Baj Nath Prasad v. Gajadhar Baksh*, XI U. D. (H. C.) 265=7 O. W. N. 551=14 R. D. 300, but see *Sheo Pyare Lal v. Aughar*, 2 L. R. Rev. 156=IV U. D. 617

<sup>2</sup> *Baj Nath Prasad v. Gajadhar Baksh*, XI U. D. (H. C.) 265

<sup>3</sup> *Perthivi Pal Singh v. Bhibhuti Singh*, 1939 A. L. J. (B. R.) 27=XX U. D. 78=1938 R. D. 793.

<sup>4</sup> *Ram Pher v. Budhai*, XX U. D. 261=1938 R. D. 711; *Ganga Prasad Singh v. Girwar Singh*, XIX U. D. 259=1938 R. D. 937.

<sup>5</sup> *Raja Ram Singh v. Sita Ram*, X U. D. 147=10 L. R. Rev. 345.

<sup>6</sup> *Amjad Ali v. Ghafoor Muhammad Khan*, 1935 A. I. R. All. 76=1934 A. L. J. 1247=XV U. D. (H. C.) 237=15 L. R. Rev. 552.

<sup>7</sup> *Nanhi v. Ram Prasad*, XVIII U. D. 379=1937 R. D. 598.

<sup>8</sup> *Punno v. Gaura Dayal*, II U. D. 42<sup>n</sup>; *Ajodhya Estate v. Sita Ram*, II U. D. 310.

<sup>9</sup> *Sheoraj Singh v. Baikunth*, II U. D. 46=2 Rev. and Cr. L. J. 1=4 R. D. 515.

trespasser, and proceed under section 180.<sup>1</sup> A fixed-rate tenant cannot by encroachment on the landholder's land add to the area of his holding. He cannot compel the landholder to accept him as tenant of the land encroached upon.<sup>2</sup> But if the landholder has once treated him as a tenant in respect of such land, *e. g.*, by suing once for ejection as a tenant<sup>3</sup> under the Tenancy Act he cannot subsequently treat him as a trespasser.

Similar remarks apply to encroachments by other tenants.

Where a tenant who had added to his holding by encroachment on other lands of the landholder was allowed to cultivate it as if the land encroached upon was an integral part of his holding, it was considered to have become so,<sup>4</sup> unless the area encroached upon was larger than the holding itself,<sup>5</sup> or was separated from the main holding by an obstacle like a railway line,<sup>6</sup> or by sufficient traces of boundary marks,<sup>7</sup> or lay in another's zamindari.<sup>8</sup> If the addition was to a fixed-rate holding, only occupancy or non-occupancy rights were allowed.<sup>9</sup>

Cases of land added to a holding by alluvion are not within the section.<sup>10</sup> The accreted land partakes of the class and nature of the holding to which it has accreted. For instance, land added by alluvion to an occupancy holding becomes occupancy land.<sup>11</sup> So an accretion to a non-occupancy holding makes it part of the original holding from its commencement.<sup>12</sup>

<sup>1</sup> *Muhammad Abdul Majid v. Bhagwati Singh*, V U. D. 431=9 Rev. and Cr. L. J. 212=4 L. R. Rev. 189=1923 R. C. 139=7 R. D. 245 ; *Shaikh Nihal Ahmad v. Rekha Singh*, B. R. 2 of 1912.

<sup>2</sup> *Prohlad v. Kidar*, 25 Cal. 305 ; *Maharaja of Vistanagram v. Ram Rekha Singh*, 14 L. R. Rev. 802=XIV U. D. 490.

<sup>3</sup> *Chhidda Singh v. Rup Ram*, 10 I. C. 224.

<sup>4</sup> *Sheikh Nihal Ahmad v. Kalka Singh*, B. R. 2 of 1912 ; *Brij Bahadur v. Baldeo*, II U. D. 528=3 R. and Cr. L. J. 49 ; *Sukha Singh v. Sobaran Singh*, III U. D. 559=1 L. R. Rev. 57=6 R. and Cr. L. J. 85=4 R. D. 352 ; *Karam Husain v. Bholai*, III U. D. 156=5 R. and Cr. L. J. 217=4 R. D. 4.

<sup>5</sup> *Avadh Indra Partab Singh v. Udai Raj Singh*, II U. D. 315=3 R. D. 236.

<sup>6</sup> *Zabar Singh v. Ragho Prasad Narain Singh*, III U. D. 140=5 R. D. 541.

<sup>7</sup> *Tika Singh v. Anwar Ahmad Khan*, IV U. D. 423=1 L. R. Rev. 150=6 R. and Cr. L. J. 276=3 U. P. L. R. 37=5 R. D. 209 ; *Mahngu Lal v. Gomti*, VII U. D. 54=7 L. R. Rev. 8=12 R. and Cr. L. J. 40=1925 R. C. 549=10 R. D. 384.

<sup>8</sup> *Har Chand v. Kanhaya Lal*, III U. D. 517.

<sup>9</sup> *Sheo Raj Singh v. Baikunth*, II U. D. 46.

<sup>10</sup> *Abdul Hamid v. Mohini Kant*, 4 C. W. N. 508 ; *Chand Mal v. Bhagwan*, II U. D. 680.

<sup>11</sup> *Mahbubunnissa v. Mumtas Ali*, III U. D. 43=3 Rev. and Cr. L. J. 235=5 R. D. 438 ; *Ram Narain v. Ashiq Husain*, IV U. D. 507=2 L. R. Rev. 203=5 R. D. 278 ; *Bansi Singh v. Kishen Singh*, II U. D. 523=2 Rev. and Cr. L. J. 19.

<sup>12</sup> *Rai Pratab Narain Singh v. Palakdhari Singh*, B. R. 11 of 1918=III U. D. 22=5 Rev. and Cr. L. J. 135 ; *Ram Bachan Singh v. Jodhu Rai*, III U. D. 23=5 Rev. and Cr. L. J. 137 ; *Contra, Ganesh v. Saifunnissa*, 29 I. U. 37=I U. D. 24.

On deposit of money under section 83, T. P. A., a mortgagor becomes entitled to possession although a decree for redemption be passed much later; and if he does obtain possession after such deposit he is not a trespasser from that date to the date of the redemption decree and is not as such liable to pay rent under the section.<sup>1</sup>

The purchaser of a fractional share of a co-sharer's proprietary rights cannot take possession of *khudkasht* land held singly or jointly by his vendor; if he does, he is a trespasser.<sup>2</sup>

A *thekadar* from a lady continuing in possession after her death is not a trespasser. The reversioners wishing to dispossess him must get their rights established in a Civil Court Revenue Court not being the proper court for decision of a dispute whether the lady had only a life interest) and if before doing so they dispossess the *thekadar*, they may be sued under section 180.<sup>3</sup>

A transferee from a proprietor who after granting a valid lease remained in possession may be sued by the lessee as a trespasser.<sup>4</sup>

5. **Retaining possession.**—This provides for cases other than those of admission to tenancy where a person's occupation was authorised when it commenced but his right to possess has come to an end although his possession continues,<sup>5</sup> *e. g.*, on ejectment proceedings.<sup>6</sup> The remarks made in note 1 also apply to such cases. An occupation lawful in its inception may become unlawful subsequently, and then the section will apply.<sup>7</sup> Where the original entry itself was unauthorised, continuance in possession without authority makes no difference. The man is a trespasser.<sup>8</sup> Where a tenant-in-chief acquiesces for sometime in the possession of another and then treats him as a trespasser, he becomes so from the time of such treatment. If he is such trespasser in respect of two out of three plots he should be ejected from all the three plots.<sup>9</sup>

A person admitted to a tenancy by one who is found to have no title or who has not the absolute title is a tenant of the real or absolute owner provided he acted in good faith in taking up the tenancy. A perpetual

<sup>1</sup> *Ram Bali Singh v. Ali Ahmad*, 9 L. R. Rev. 29—1927 R. C. 475—IX U. D. (H. C.) 15—12 R. D. 179.

<sup>2</sup> *Chhotu Singh v. Mahadeo Prasad*, 14 L. R. Rev. 382—XIV U. D. 465.

<sup>3</sup> *Pati Ram v. Lalta*, XIV U. D. 512—14 L. R. Rev. 842.

<sup>4</sup> *Parmeshwar Baksh Singh v. Nokhe Singh*, 1930 A. I. R. 42—118 I. C. 96—13 R. D. 276.

<sup>5</sup> See *Ram Dayal v. Lalta Prasad*, 14 L. R. Rev. 519—XV U. D. 136, as to some of the cases that fall in this category; *Jageshar Baksh Singh v. Hanwant Singh*, II U. D. 646—2 O. L. J. 745; *Jai Chand v. Gokaran*, V U. D. 367—4 L. R. Rev. 126; *Parmeshar Lal v. Rukmin*, 5 L. R. Rev. (Oudh) 3.

<sup>6</sup> *Gatsaran Narainji Maharaj v. Jagat Singh*, XVI U. D. 133.

<sup>7</sup> *Lal Singh v. Hanari Singh*, 17 O. C. 343—26 I. C. 242.

<sup>8</sup> *Abdul Moghani v. Jasir*, 14 L. R. Rev. 663—XIV U. D. 339.

<sup>9</sup> *Basdeo v. Kashi*, XV U. D. 505—16 L. R. Rev. 76.

lessee under a lease granted by the mother of a Mahomedan is a tenant and not a trespasser.<sup>1</sup>

A person holding for a long time under a compromise which is found to be invalid is not retaining possession without consent.<sup>2</sup>

A class of such cases is that of those sub-tenancies which terminate *ipso facto* on the extinction of the interests of their tenants-in-chief, *e. g.*, by death without heirs, ejectment, etc. Continuance in possession is without consent<sup>3</sup> unless the circumstances show admission to the tenancy as in *Sukhdeo Prasad v. Sitabo*.<sup>4</sup>

Revenue paper entries will be *Kabiz bila tasfia* and not as trespassers.<sup>5</sup>

A landholder sued the tenant-in-chief and *A* jointly for arrears of rent and obtained a joint decree. On the death of the tenant-in-chief, he sued *A* for ejectment under section 180. *A* did not prove that he held the land on his own account and not under the tenant-in-chief. The rent suit is not an acknowledgment of tenant right in *A*, and in the absence of any other proof that *A* was treated as a tenant after the death of the original tenant, the suit under section 180 is maintainable.<sup>6</sup>

A lambardar took surrender of a holding and began to cultivate it as *khudkasht*. He gave a *theka* of his share to *A* and ceased to be the lambardar. The land ceased to be *khudkasht* but his continuance in possession of it is not unlawful.<sup>7</sup>

Another class of cases is furnished where on a partition, land in the cultivation of a co-sharer, *A*, is allotted to the mahal of another co-sharer, *B*, but *A* continues to cultivate and the *khudkasht* is of less than 10 (now 3) years' standing. He was a trespasser,<sup>8</sup> but if of more than 10 years' standing, he was a tenant.

<sup>1</sup> *Tahad Ali Khan v. Israrullah*, 1939 All 89.

<sup>2</sup> *Komil v. Jageswar Prasad*, XIX U. D. 268=1938 R. D. 940.

<sup>3</sup> *Sukhdeo v. Man*, II U. D. 53; *Haider Sultan v. Behari*, 9 L. R. Rev. 320=IX U. D. 159=12 R. D. 748; *Babu Ram v. Jiva*, 10 L. R. Rev. 104=X U. D. 77=13 R. D. 341; *Sahdeo v. Sheo Din*, 11 L. R. Rev. 52=XI U. D. 43=14 R. D. 146.

<sup>4</sup> X U. D. 48=10 L. R. Rev. 61=13 R. D. 167; *Sheo Saran Sahai v. Asmatullah*, XVIII U. D. 123=1937 R. D. 149.

<sup>5</sup> *Zafar Singh v. Baldeo Sahai*, XVI U. D. 543.

<sup>6</sup> *Zahur Ali v. Sheo Sampat*, 11 L. R. Rev. 176=XI U. D. 150=14 R. D. 412.

<sup>7</sup> *Pearey Lal v. Usman Ahmad Khan*, 13 L. R. Rev. 12=XIII U. D. 40.

<sup>8</sup> *Nandan Singh v. Ganga Prasad*, 35 All. 512=11 A. L. J. 706=20 I. C. 892; *Khushal Singh v. Adhakaran*, 11 A. L. J. 377; *Bishwanath v. Ram Kumar*, 12 L. R. Rev. 350=XII U. D. 274=15 R. D. 716; *Lachman Singh v. Genda*, II U. D. 284; *Rupram v. Ram Chandra*, VII U. D. 128=7 L. R. Rev. 160=1926 R. C. 210=12 R. Rev. and Cr. L. J. 171=10 R. D. 483; *Mukhtar v. Phulloo*, VII U. D. 135=7 L. R. Rev. 483; *Baij Nath v. Sri Thakur Jagat Sarkar*, 8 L. R. Rev. 357=VIII U. D. 129=1927 R. C. 410=12 R. D. 325; *Ram Saran v. Budh Sen*, X U. D. 103=10 L. R. Rev. 114=13 R. D. 360; *Chet Singh v. Gulab Singh*, IV U. D. 584=2 L. R. Rev. 237.



But if the condition in the partition proceedings provided that *A* was to be entered as the non-occupancy tenant of the plot, *A* became a statutory tenant<sup>1</sup> (now hereditary tenant).

In *Kali Prasad v. Babu Lal Bachu Rai*,<sup>2</sup> it was held that the entry of a clause in the partition proceeding to the effect that the *khudkasht* of a co-sharer falling in another mahal will become the non-occupancy tenancy of the *khudkasht* holder for a period of one year does not create a contract of tenancy. This was also the view in *Bulram Singh v. Sheo Charan Singh*,<sup>3</sup> and is inconsistent with X U. D. 207 cited above.

If *A* was entered as a tenant of the land which had gone to *B*'s mahal and had remained in occupation for 12 years, he cannot be said to hold without consent.<sup>4</sup>

If on a partition a plot of *khudkasht* held by *A* is in portions allotted to different *kuras* and the portion falling into *B*'s *kura* is demarcated, he can sue *A* in respect of it under the section<sup>5</sup>; *secus*, if no demarcation has taken place.

Some *sir* belonged jointly to co-sharers, *A* and *B*. At a private partition it was allotted to *A*, though *B* had been in cultivation of it. *A* sold his proprietary rights and in a proceeding under section 36, Land Revenue Act, to which *A* was not a party, *A* was declared to be its exproprietary tenant. *A* who has all along been cultivating it is not a trespasser who can be ejected by *A* under section 180.<sup>6</sup>

See note 10 to section 26 at p 159, *ante*.

Where the cultivator of *sir* has been in possession for 14 years, and the village papers show him as liable to pay rent, he is not a trespasser although he has not actually paid any rent.<sup>7</sup>

Where on a private partition certain plots are allotted to one co-sharer and *A* another co-sharer takes possession of it, he does so without consent of the persons entitled.<sup>8</sup>

Another class is furnished by mortgagees continuing to occupy land after the termination of their mortgages, unless the mortgaged land was let to the mortgagee as a tenant, in which case the tenancy survives the mortgage.<sup>9</sup> The mere fact that he is entered as a tenant in the revenue

<sup>1</sup> *Baij Nath v. Palakdhari*, X U. D. 207.

<sup>2</sup> B. R. 2 of 1931=XII U. D. (B. R.) 7=12 L. R. Rev. 363=15 R. D. 773.

<sup>3</sup> XII U. D. 41=15 R. D. 768.

<sup>4</sup> *Bhuru v. Tulsī*, III U. D. 190=4 R. D. 37.

<sup>5</sup> *Ram Saran v. Tulshi*, III U. D. 479=60 I. C. 238=2 U. P. L. R. 90=4 R. D. 288; see *Ram Bharos v. Balwant Rai*, XI U. D. 103=14 R. D. 389.

<sup>6</sup> *Dalip Mal v. Amrit Lal*, XVI U. D. 584.

<sup>7</sup> *Narain Gir v. Mahadeo Rai*, XI U. D. 218.

<sup>8</sup> *Bharat Singh v. Jagan Nath Prasad*, 1937 A. I. R. Oudh 509=XVIII U. D. (H. C.) 219=1937 O. W. N., 1009=1937 R. D. 526.

<sup>9</sup> *Jado Nandan Lal v. Jag Nandan*, X U. D. 208=14 R. D. 83.

papers is not enough to constitute him a tenant and prevent him from becoming a trespasser after the redemption of the mortgage.<sup>1</sup> In other words, the mortgagee's tenancy must be proved by proof of admission to it. The fact that the mortgagee planted trees several years back while in possession as mortgagee without any objection is immaterial and will not entitle him to continue in occupation after the extinction of the mortgage.<sup>2</sup>

After making a usufructuary mortgage, although according to a Board Ruling, the mortgagor and mortgagee constitute one tenant, the mortgagor cannot take possession of any of the properties comprised in the mortgage. Hence the mortgagor or the purchaser of the right of redemption from him taking possession of *sir* land included in the mortgage on a surrender by the tenant of the *sir* is a trespasser as against the mortgagee who can sue him under this section.<sup>3</sup>

The fact that after the termination of the mortgage, the mortgagee acquired a fractional share in the area in which the mortgaged plot in his possession is situate will not make it his *khudkasht*. He will be in occupation without consent.<sup>4</sup>

A mortgage may come to end by redemption or on the termination of the interest of the mortgagor. Section 47(3) shows that a valid mortgage of an intransferable holding executed before 1902 is not extinguished by surrender or abandonment by the mortgagor, but continues in operation as indicated therein. Hence continuance in possession by a mortgagee after surrender or abandonment by the mortgagor will not be as trespasser to which alone section 180 applies. Where termination of the tenant's interest is due to any of the other causes mentioned in section 45, *e. g.*, death<sup>5</sup> or ejectment,<sup>6</sup> a mortgagee continuing in possession may be dealt with as a trespasser, unless the landholder recognised him as tenant.

Where the mortgagor has a transferable interest, termination of his interest will not necessarily put an end to the mortgage,<sup>7</sup> but it may. A, one of several co sharers in a *khata khewat*, mortgages his *khudkasht* to M. On partition, this *khata khewat* is allotted to B. The mortgage now attaches to the share allotted to A and not to the *khudkasht* land which has been allotted to B. Unless B admits M to tenancy of the land, M's continuance in possession is retention of possession without B's

<sup>1</sup> *Mahapat Ruout v. Budh Ram*, 14 L. R. Rev. 914=15 L. R. Rev. 575.

<sup>2</sup> *Sundar Prasad v. Jhingur*, X U. D. 39=10 L. R. Rev. 57=13 R. D. 211.

<sup>3</sup> *Chintamani Singh v. Basawan Singh*, XVIII U. D. 240=1937 R. D. 339.

<sup>4</sup> *Beni Madhab Singh v. Ram Dayal*, XVII U. D. 22=1936 R. D. 34.

<sup>5</sup> *Nar Singh v. Kariya Lal*, IV U. D. 311=6 R. D. 509; *Gauri Shankar v. Nageshwar*, 1925 R. C. 159=8 R. D. 488.

<sup>6</sup> *Hansai Khan v. Fauzdar Khan*, VIII U. D. 132=8 L. R. Rev. 359=1927 R. C. 322=12 R. D. 286; *Sarfuraz Singh v. Deputy Commissioner*, 4 Luck. 577=XI U. D. (H. C.) 86=13 R. D. 108.

<sup>7</sup> *Kamta Prasad v. Panna Lal*, 35 All. 123=11 A. L. J. 29.

consent, and hence exposes *M* to action under section 180,<sup>1</sup> and limitation will run from the confirmation of the partition.<sup>2</sup>

As between the mortgagor and his mortgagee, a mortgage comes to an end by redemption, after which continuance in occupation or resumption of possession by the mortgagee of any part of the land mortgaged is, as regards the mortgagor, retention of possession without his consent, and brings in the operation of section 180.<sup>3</sup> But if the mortgagor, after the redemption, admitted him as tenant or sued him for ejectment as tenant, section 180 ceases to be applicable so far as any claim for compensation for use and occupation is concerned.<sup>4</sup>

If the zamindars recognised *A* as *sharik kasht* with an occupancy tenant's widow, there is no recognition of *A* as an occupancy tenant. But if he also sues *A* and the widow for arrears of rent and has him arrested in execution proceedings, *A* can not after the widow's death be treated as a trespasser. He may be deemed a non-occupancy tenant, and unless he within 3 years from the widow's death got his rent fixed and his status declared as a statutory tenant, he will be ejected as a non-occupancy tenant.<sup>5</sup>

A vendor who, after the sale, continues to cultivate the land over which exproprietary rights have not accrued is a trespasser.<sup>6</sup>

If, however, the vendor refuses to deliver possession of the zamindari itself, a suit in respect of it can not be brought under this section.<sup>7</sup>

Where on a sale of zamindari, the vendor reserves his proprietary rights in certain plots, but at the partition by some mistake the plots are included in the purchaser's lot, the vendor in possession is not a person keeping or retaining possession without consent.<sup>8</sup>

Another class is of the holder of a grove which has ceased to be such. Sale of zamindari passes a grove held by the vendor. The retention of

<sup>1</sup> *Ram Lal Singh v. Achaibar Singh*, X U. D. 212=14 R. D. 84.

<sup>2</sup> *Sachita Nand v. Shiva Saran Rao*, XIX U. D. 84=1938 R. D. 125, *Contra*, *Badri Nath v. Kashi Prasad Singh*, XVIII U. D. 122=1937 R. D. 140.

<sup>3</sup> *Shao Shankar Lal v. Chandan*, IV U. D. 145=6 R. and Cr. L. J. 225=2 U. P. L. R. (B. R.) 65=6 R. D. 246=75 I. C. 8, *Rahmat v. Maha Lazmi*, XI U. D. 20=10 L. R. Rev. 322=13 R. D. 844. *Contra*, *Anupa v. Bhusai*, 1922 R. C. 416=V U. D. 205, 298=6 L. R. Rev. 496=7 R. D. 493.

<sup>4</sup> *Chhuddu Singh v. Rupram*, 10 I. C. 224.

<sup>5</sup> *Jafar Ali Khan v. Maiku*, XVIII U. D. 345=1937 R. D. 560.

<sup>6</sup> *Bishundhari Ram v. Sagar Rai*, IV U. D. 527=2 L. R. Rev. 36=7 R. and Cr. L. J. 101=5 R. D. 295; *Jwala Devi v. Vijai Singh*, B. R. 6 of 1933=XIV U. D. (B. R.) 34, following IV U. D. 23 and overruling XIII U. D. 40; *Raj Behari Lal v. Kundan*, XV U. D. 440; *Lala Singh v. Hazari Singh*, 17 O. C. 343=26 I. C. 242; *Ram Lagan Singh v. Ram Das Singh*, IV U. D. 23=1 L. R. Rev. 68; *Mathura Prasad v. Inderpal Singh*, VI U. D. 80=5 L. R. Rev. (Oudh) 55; *Jageshar Prasad Singh v. Hanwanta Singh*, 2 O. L. J. 748; *Ram Lal v. Jai Devi*, XIX U. D. 49=1938 R. D. 750.

<sup>7</sup> *Fateh Singh v. Ram Rup*, II U. D. 696.

<sup>8</sup> *Manni Lal v. Lal Bahadur*, 1934 A. I. R. Oudh 174=XV U. D. (H. C.) 121.

possession after the sale by the vendor is as trespass.<sup>1</sup> See notes to section 206 (a,) *infra*.

If *abadi* land is brought under cultivation, section 180 applies.<sup>2</sup>

Where a rent free grantee after letting the land dies, and the tenant continues in occupation without paying rent, his occupation is without consent.<sup>3</sup>

Where a mahant or manager of the property of an idol grants a lease in excess of his powers, but the lessee remains in possession and pays rent for a number of years, even after the death of the mahant, he is not a trespasser as against the mahant's successor although the latter obtains a declaration that the lease was invalid.<sup>4</sup>

Where it is not clear whether a person's right to occupancy has ceased after cessation of his title, this section will not apply, *e. g.*, a mortgagor who has taken a part of the mortgaged land on lease continuing in occupation after the expiration of the lease.<sup>5</sup> If the mortgagor's son takes the land, an occupancy holding, his occupation commenced as a tenant and is without consent after the mortgagor's death.<sup>6</sup> *B* is the *thekadar* of an indigo factory of *M* who sells it to *N* and the latter sublets part of the factory land to *A*. *B*'s suit to eject *A* and *N* was dismissed, as it was not shown that *A*'s right terminated with the cessation of the indigo factory.<sup>7</sup>

6. **Without consent.**—The section cannot be resorted to where the occupation is with consent,<sup>8</sup> *e. g.*, as tenant or where it has been judicially determined that it is not without consent,<sup>9</sup> or where rent has been assessed at the instance of the landholder, and the occupier has occupied the land for a number of years thereafter, though without paying rent,<sup>10</sup> or if he occupies under an agreement to pay rent at a certain rate<sup>11</sup>, but if he challenges the agreement and refuses to pay the agreed rent he may be sued under this section.<sup>12</sup>

<sup>1</sup> *Shib Dayal v. Sunder Lal*, XVI U. D. 546.

<sup>2</sup> *Phuchai Singh v. Ram Chandra*, V U D. 281=4 L. R. Rev. 35=1922 R. C. 405=7 R. D. 414.

<sup>3</sup> *Gafur v. Mahadeo*, 7 L. R. Rev. 197=VII U. D. 6=1926 R. C. 242=10 R. D. 16.

<sup>4</sup> *Maula Dad Khan v. Sri Thakur Radha Kant*, 1935 A. L. J. 645=A. I. R. All. 629=1935 R. D. 233=XVI U. D. 282.

<sup>5</sup> *Shah Muhammad Naim Ata v. Murlidhar*, III U. D. 146=46 I. C. 75=4 R. and Cr. L. J. 211=7 R. D. 459.

<sup>6</sup> *Kallu v. Bhola Singh*, V U. D. 124=1923 R. C. 83=3 L. R. Rev. 463=6 R. D. 62.

<sup>7</sup> *Sham Das v. Deo Narain Singh*, III U. D. 498=2 U. P. L. R. 160.

<sup>8</sup> *Jag Mohan v. Kamta Shiramani Prasad Singh*, II U. D. 648.

<sup>9</sup> *Ram Dutt v. Muh. Ali Khan*, B. R. 13 of 1891; *Bhabhuti v. Sumer Singh*, B. R. 20 of 1892.

<sup>10</sup> *Mahaish v. Singha Chanda Estate*, II U. D. 538, *Mata Din v. Sp. Manager*, XI U. D. (H. C.) 10=13 R. D. 25.

<sup>11</sup> *Hoti Lal v. Chhuttan Lal*, 51 I. C. 15=4 R. and Cr. L. J. 1.

<sup>12</sup> *Partab Bahadur Singh v. Sarai*, IV U. D. 244.

Consent may be express or implied,<sup>1</sup> *e. g.*, by realising rent.<sup>2</sup>

Where the person in occupation is a tenant of some sort, he does not occupy without consent.<sup>3</sup>

A person may begin to occupy land with the owner's consent (1) on an agreement to pay (a) a definite rent, or (b) some rent, or (2) without any express agreement to pay; or he may merely squat on another's land without leave or license of the other.

There can be no doubt of a tenancy where occupation commences on an express agreement to pay an agreed rent. Where occupation commences on such agreement with the consent of the *de facto* owner at the time, *e. g.*, trespasser, mortgagee, *thekadar*, etc., the question whether the person so occupying is to be deemed to be a tenant of the real and *de jure* owner when he obtains possession depends on circumstances of the case; see note 10 to section 29 *ante*

If the person in possession can not prove his admission to the land by the landholder, he is deemed to hold without consent.<sup>4</sup>

A person, to whom *sir* and *khudkasht* has been donated by an incompetent person (a life tenant and the gift has been declared to be void) is not, after such declaration, holding the land with the consent of the person who got the gift declared invalid and to whom the estate has come, although his occupation has continued for a considerable time.<sup>5</sup>

Where a Hindu widow with a limited interest has alienated her proprietary rights and dies or the alienation is set aside and the property reverts to the reversioners, the vendee or transferee if in possession of the *sir* or *khudkasht*, becomes a trespasser thereon; the *sir* regains its character as *sir* in the hands of the reversioners, and a person admitted to the tenancy thereof by the vendee or transferee becomes liable to ejectment as the sub-tenant of *sir land*. If the reversioner does not get actual possession of the widow's *khudkasht*, the person in possession who was admitted by the vendee or transferee is a trespasser, but if he gets possession the land becomes his *khudkasht*. In case of land which is neither *sir* nor *khudkasht* the person admitted as tenant by the vendee or transferee becomes a tenant.<sup>6</sup>

Where a suit to eject a person as tenant has failed, another to eject him as a trespasser is not maintainable,<sup>7</sup> because having once elected

<sup>1</sup> *Indar Kuar v. Ram Nath*, B. R. 34 of 1891.

<sup>2</sup> *Ib.*

<sup>3</sup> *Kesho Das v. Partab Singh*, II U. D. 504.

<sup>4</sup> *Tapeera v. Sugis*, XV U. D. 221=15 L. R. Rev. 281, *Rampher v. Budhai*, XIX U. D. 261; *Ganga Prasad Singh v. Girwar Singh*, XIX U. D. 259, *Indarpal Singh v. Gaya Prasad*, XV U. D. (H. C.) 285. See also *Ram Kumar v. Sukha*, XIV U. D. 190.

<sup>5</sup> *Sant Bux Pal v. Dulhin Raghu Nath Kumari*, 11 L. R. Rev. 88=XI U. D. 74=14 R. D. 254.

<sup>6</sup> *Rati Lal Singh v. Resal Singh*, XVII U. D. 193.

<sup>7</sup> *Sharat Singh v. Gur Prasad*, XVI U. D. 573.

to accept the defendant as tenant, the plaintiff cannot be allowed to treat him as a trespasser.

Where *A* sued *B* for arrears of rent on the distinct allegation that *B* occupied the land under an agreement to pay rent, and that agreement is not proved, he cannot for the same reason, be allowed to sue under this section.<sup>1</sup>

Where a landholder accepts rent from an occupier of land, he cannot treat him as a person holding without consent.<sup>2</sup>

Where occupation commences with consent but without an agreement to pay rent, several considerations arise. One is furnished by *Kamta Prasad v. Panna Lal*.<sup>3</sup> There, the owners created a usufructuary mortgage over their zamindari, *sir* and occupancy holding in 1897 in favour of *A*. Their zamindari rights were sold in execution of a money decree and purchased by *B*, with the result that the owners became the exproprietary tenants of the *sir* and *A* their sub-tenant in respect of it. *B* ejected the owners under section 59 of the Act of 1901 (present s. 168) and then ejected *A* as a non-occupancy tenant. As *A*'s occupation had commenced with the consent of the then owners, his occupation during the period between the two ejectments was held not to be without consent, so as to entitle *B* to sue *A* for damages in the shape of rent for that period. *Sheo Gopal v. Baldeo Singh*<sup>4</sup> is another case of the same type. There *A* was let in by an occupancy tenant, who had mortgaged his holding to *B*. *B* ejected *A* as a sub-tenant, and, then, sued for rent for a period prior to ejectment. Under section 34, (present s. 180) the suit was held not to lie after ejectment,

This phase is part of the larger question, *viz.*, whether if *C* is entitled to put *A* in occupation, and does so, *A* would be deemed to be in occupation with the consent of the landholder after *C*'s interest has ceased. See note 10 to section 29 *ante*.

Where *B* lets *A* into occupation of the land with an agreement, express or implied, that some rent will be paid, or the village papers show that he is liable to pay rent, although he has not paid any rent,<sup>5</sup> there is undoubtedly a tenancy and section 180 will not apply, but section 94 will.

But where no such agreement is expressed or can be implied, the burden of proving which is on the person who asserts it,<sup>6</sup> the letting into occupation is with consent, which bars the application of section 180. The proprietor's remedy is under section 94 if the intention in letting

<sup>1</sup> *Bindeshri Prasad Singh v. Bisheshar Singh*, 2 A. L. J. 383—33 I. C. 499.

<sup>2</sup> *Payag Singh v. Manohar Lal*, IX U. D. (H. C.) 223.

<sup>3</sup> 35 All. 123—11 A. L. J. 29.

<sup>4</sup> 8 A. L. J. 1087.

<sup>5</sup> *Naram Gır v. Mahadeo Rai*, 14 L. R. Rev. 111.

<sup>6</sup> *Sukhdeo Singh v. Muh Abdul Majid*, 9 Rev. and Cr. L. J. 248—V U. D. 459—4 L. R. Rev. 229—1932 R. C. 159—7 R. D. 268.

it was to create a contract of tenancy, or under the resumption chapter in other cases.<sup>1</sup>

A person who after a decree or order for ejectment re-enters into possession may be proceeded against under the section unless he proves the written (not oral) consent of the landholder to his reoccupation.<sup>2</sup>

Where after an order of ejectment and formal *dakhal dehani* a tenant was reinstated at once, the ejectment did not constitute a break in his tenancy and his possession is not that of a trespasser.<sup>3</sup>

If the occupier disclaims the status of *muafidar*, section 180 will apply,<sup>4</sup> if section 94 does not. The Board of Revenue held that whether land is held with or without consent (but without any contract in regard to rent), the years of occupation in which there was no such contract did not count towards the 12 years for acquisition of occupancy rights.<sup>5</sup>

The question had not been approached from a proper point. If the initial letting in was with the object of creating a tenancy, non-payment of rent was no bar to the acquisition of occupancy right, but if it was with the object of creating a rent-free grant or holding, section 157 of the Act of 1901 (present s. 198) applied.<sup>6</sup> It had also been held that where no rent was paid for the first few years as the tenant had to convert unculturable land, those years did count towards the 12 years.<sup>7</sup> The intention was difficult to ascertain after the lapse of a considerable number of years and the question resolved itself into whether the presumption should be in favour of a tenancy as in a case under section 94 or a rent-free holding.

Where occupation commenced as a squatter, the intention of the latter may be (1) to hold adversely to the proprietor, (2) to hold as a squatting cultivator.<sup>8</sup> In the first case he must assert proprietary

<sup>1</sup> *Khairati Singh v. Behari*, III U. D. 451—I L. R. Rev. 23—4 R. D. 458; *Beni Madho v. Gulsari Lal*, 2 U. P. L. R. (B. R.) 119—4 R. D. 236; *Dwarka Prasad v. Dirgaj Singh*, I U. D. 27—30 I. C. 789; *Lachmi Narain v. Sardar Kunwar*, I U. D. 122.

<sup>2</sup> *Wali Muhammad v. Beni Chand*, B. R. 9 of 1934—XV U. D. (B. R.) 28—15 L. R. Rev. 215. See also section 240(1).

<sup>3</sup> *Nawab Singh v. Sahab Singh*, 1941 R. D. 86.

<sup>4</sup> *Balak v. Collector*, I U. D. 3—29 I. C. 285.

<sup>5</sup> *Jasoda v. Dalail Singh*, I U. D. 29—30 I. C. 790; *Nasiruddin v. Muniruddin* I U. D. 54—32 I. C. 379; *Amir Husain v. Allahdia*, III U. D. 410—1 L. R. Rev. 43—4 R. D. 220; *Contra, Shoo Prasad v. Kali Charan*, I U. D. 113; *Kesho Prasad v. Diljor Singh*, III U. D. 161—4 R. D. 11; *Bhuru v. Tulshi*, III U. D. 190—4 R. D. 37; *Khushi Ram v. Maha Singh*, 10 I. C. 112 (A.); *Narain Roy v. Opnit*, 9 Cal. 304 (case under s. 6 of Beng. Act 8 of 1869).

<sup>6</sup> *Kesho Prasad Singh v. Purandar*, III U. D. 541—4 R. D. 331; *Dwarka Prasad v. Dirgaj Singh*, I U. D. 27—30 I. C. 789.

<sup>7</sup> *Sarwan Prasad v. Inderdeo Lal*, III U. D. 539—4 R. D. 330.

<sup>8</sup> *Bhagwan Din v. Shankar Prasad*, II U. D. 664, 20—33 I. C. 161—B. R. 1 of 1916—2 Rev. and Cr. L. J. 235—39 I. C. 520—4 R. D. 664, 490.

right; or he will be deemed to be a squatting cultivator to whom section 180 will apply. He will cease to be a squatter after three years.

Can consent to occupation be presumed from long occupation without objection by the owner? Or can non-consent be presumed from non-payment of rent?

In some cases consent to occupation has been presumed from its length.<sup>1</sup> In other cases, the Board strongly repelled any such presumption.<sup>2</sup>

No hard and fast rule could be laid down. It was a question of fact in each case to be inferred from proved facts.<sup>3</sup> Suing the occupier under section 194 is a fact from which the court may infer a rent-free holding, i.e., consent.<sup>4</sup>

Absence of consent may be inferred from non-payment of rent.<sup>5</sup> Nor does the entry of a plot as unrented in the settlement records imply occupation with consent.<sup>6</sup>

<sup>1</sup> *Sheo Prasad v. Kali Charan*, I U. D. 113 (22 years); *Lachmi Narain v. Sardar Kunwar*, I U. D. 123 (42 years); *Misaji Lal v. Hori Lal*, II U. D. 317=34 I. C. 162, (40 years); *Girwar Singh v. Nathu Mal*, II U. D. 462=8 R. and Cr. L. J. 254 (20 years); *Dwarka Prasad v. Dirguj Singh*, I U. D. 27=30 I. C. 789 (over 12 years); *Karam Husain v. Bholai*, III U. D. 156=5 Rev. and Cr. L. J. 217; *Lal Bahadur Singh v. Suraj Prasad*, III U. D. 301=4 R. D. 120; *Madho Singh v. Bu Ali*, III U. D. 66=5 Rev. and Cr. L. J. 88=5 R. D. 463 (50 years); *Parsidh Narain v. Basdeo Singh*, IV U. D. 346=6 R. D. 538, see also *Har Sarup v. Raghubir*, 7 L. R. Rev. 371=VII U. D. 221=1926 R. C. 295.

<sup>2</sup> *Nasiruddin v. Muniruddin*, I U. D. 54, (21 years); *Ghansham Singh v. Mohan Singh*, I U. D. 297=31 I. C. 486; *Kedar Singh v. Nepal*, II U. D. 76, 599 (27 years); *Nirman Singh v. Bahadur Singh*, I U. D. 308=31 I. C. 445, (14 years); *Sat Narain Prasad v. Ram Kumar*, B. R. 3 of 1910 (over 12 years); *Sri Krishan Datt v. Jai Karan Singh*, IV U. D. 207=7 Rev. and Cr. L. J. 128=2 L. R. Rev. 17=6 R. D. 408; *Murli Dhar Singh v. Gyasi Ram*, B. R. 15 of 1919=III U. D. 295, 708=1 U. P. L. R. (B. R.) 18=52 I. C. 469, (40 years); *Rudra Pratab Narain v. Paratab Narain*, V U. D. 17=8 Rev. and Cr. L. J. 53=3 L. R. Rev. 6=8 R. D. 506, (50 years); *Gopal Lalji v. Gaya*, V U. D. 112=8 Rev. and Cr. L. J. 137=1922 R. C. 40=3 L. R. Rev. 157=6 R. D. 34 (22 years); *Maharajah of Benares v. Ram Sundar*, V U. D. 43=1922 R. C. 34=3 L. R. Rev. 160=7 R. D. 55 (over 12 years); *Jafari Begam v. Rampal*, V U. D. 240=1922 R. C. 352=3 L. R. Rev. 406=7 R. D. 435, (14 years); *Anandi Lal v. Reoti Prasad*, 1922 R. C. 590=V U. D. 410=7 R. D. 224; *Sukhdeo Singh v. Muh. Abdul Majid*, 9 Rev. and Cr. L. J. 248; *Chandi Prasad v. Karim Baksh*, 8 L. R. Rev. 299=VIII U. D. 73=1927 R. C. 549=11 R. D. 643 (over 12 years.)

<sup>3</sup> *Bhagwan Devi v. Mithani*, IV U. D. 211=1 L. R. Rev. 199=6 R. D. 411; *Parsidh Narain Singh v. Basdeo Singh*, IV U. D. 346; *Seetla Buz Singh v. Abdul Majid*, IV U. D. 640=3 L. R. Rev. 40=5 R. D. 43.

<sup>4</sup> *Sri Krishna Datt v. Jai Karan Singh*, IV U. D. 207. See also *Kesho Prasad Singh v. Gaya*, IV U. D. 818=5 R. D. 402.

<sup>5</sup> *Phuchai Singi v. Sri Ramchandra*, V U. D. 281=1922 R. C. 405.

<sup>6</sup> *Gulzari v. Muh. Ali Husain Khan*, B. R. 1 of 1924=1924 B. C. 141=10 Rev. and Cr. L. J. 313=VI U. D. xvii=5 L. R. Rev. 246.



Where a tenant permits a person to be in occupation of any part of his holding, such person occupies on sufferance, and becomes a person holding without consent, from the time the consent is withdrawn.<sup>1</sup>

7. **Jurisdiction, forum.**—The land owner's right to treat a trespasser as such and to sue him for damages is affirmed by the section. He may treat the trespasser as a tenant and sue as such<sup>2</sup> or as a trespasser and sue under section 180<sup>3</sup> or perhaps he may sue in a Civil Court.<sup>4</sup> In a revenue suit the maximum damages are 4 years' rent. In a civil suit, full damages, whatever the amount may be awarded. A civil suit is not barred.<sup>5</sup>

*Dan Sahai v. Jai Ram Singh*,<sup>6</sup> strikes a note of dissent from the current view that a landholder may sue either in a Revenue Court under section 180 or in a Civil Court as trespasser a person who has taken or retained possession without his consent. A decree for the ejectment of a tenant was passed, on 26th May, 1927, but the landholder failed to take possession prior to 30th June, 1927, as required by section 94 of the Act of 1926. He obtained a *dakhalmama* on 14th July, 1927, giving him formal possession, but the tenant was still in physical possession in July, 1928. In September, 1928, the landholder sued the tenant in the Civil Court for possession as trespasser. It was ruled that if the *dakhaldehani* did not constitute a break in the tenancy, the tenant continued

<sup>1</sup> *Mathura v. Raj Kumar*, III U. D. 465=4 R. D. 272; *Khiyal v. Permeshwari*, V U. D. 160=6 R. D. 195; *Janki v. Ram Sahai*, B. R. 4 of 1923=V U. D. cxxx=1923 R. C. 377=9 Rev. and Cr. L. J. 314=4 L. R. Rev. 398.

<sup>2</sup> As in *Balli v. Naubat*, 9 A. L. J. 771=16 I. C. 120; *Jagardoo Singh v. Ali Ahmad*, 40 A. 300=16 A. L. J. 249=4 Rev. and Cr. L. J. 665=44 I. C. 919; *Ram Saran v. Tulsi*, 2 U. P. L. R. 90=III U. D. 479; *Sheo Dihal v. Gauri Shankar*, 10 Rev. and Cr. L. J. 111=5 L. R. Rev. 95=1924 R. C. 57=8 R. D. 125; *Hem Nath v. Baldeo Singh*, II U. D. 637.

<sup>3</sup> *Indar Dat v. Balgobind*, 2 O. L. J. 393=30 I. C. 364; *Lala Singh v. Hazari Singh*, 17 O. C. 343, 344=1 O. L. J. 574=26 I. C. 242; *Jageshar v. Gopi Nath*, 2 U. P. L. R. (B. R.) 122=IV U. D. 437=5 R. D. 216; *Sheoraj Singh v. Kunj Behari*, 1927 A. I. R. All. 720=8 L. R. Rev. 297=VIII U. D. (H. C.) 267=105 I. C. 878=1927 R. C. 305=11 R. D. 305; *Sri Ram Singh v. Baldeo Prasad*, 1932 A. I. R. All. 643=1932 A. L. J. 605=XIII U. D. (H. C.) 96, 552=13 L. R. Rev. 365=16 R. D. 450=138 I. C. 552; *Ram Charan v. Champat Singh*, VI U. D. (H. C.) 147=5 L. R. Rev. (Oudh) 27.

<sup>4</sup> *Debi Sahai v. Daulat*, 1927 A. I. R. All. 346=VIII U. D. (H. C.) 100=1927 R. C. 74=8 L. R. Rev. 104=11 R. D. 163=100 I. C. 471; *Muh. Muslim v. Maharama*, 25 A. L. J. 545; *Raj v. Ramkaran*, 1930 A. L. J. 637=1930 A. I. R. All. 604; *Jagdamba Singh v. Ram Sarup*, 1937 All. 570=1937 A. I. R. All. 415=1937 A. L. J. 329=XVIII U. D. (H. C.) 57=1937 R. D. 176; *Lachminia v. Makfula*, 1938 All. 441=1938 A. L. J. 323=XIX U. D. (H. C.) 58.

<sup>5</sup> *Muh. Muslim v. Maharama*, 25 A. L. J. 545=8 L. R. Rev. 250=VIII U. D. (H. C.) 224=1927 R. C. 272, under cases cited in the last footnote.

<sup>6</sup> 1932 A. L. J. 517=1932 A. I. R. All. 465=15 R. D. 436=13 L. R. Rev. 287=XIII U. D. (H. C.) 148.

to be a tenant and a suit for ejection lay in a Revenue Court only ; on the other hand, if the *dakhaldehani* put an end to the tenancy, the *ci-devant* tenant was holding or retaining possession without the landholder's consent, and a suit to eject him lay only in a Revenue Court. The plea of jurisdiction was not taken in either of the two lower courts but was the only one on which the High Court proceeded. The learned judges give no indication whether in arriving at their decision they considered the view or the cases that section 180 did not provide an exclusive or exhaustive remedy against a trespasser and that the landholder had the option of suing either in a Civil or in a Revenue Court. *Duiji Kunwar v. Bala Kunwar*,<sup>1</sup> is to the same effect.

Where a person occupies another's land for cultivation a suit to eject him lies in a Revenue Court, but if he occupies it for other purposes the Civil Court is the proper *forum*.<sup>2</sup> In such a suit the landholder must prove that occupation was without consent.<sup>3</sup>

As to sub-tenant who has been dispossessed by the landholder, see note 23 to section 3 *ante*.

The section does not give jurisdiction to revenue courts where the defendant raises a *bona fide* question of title,<sup>4</sup> *e.g.*, adverse possession for more than 12 years,<sup>5</sup> or where the plaintiff claims a title by adverse

<sup>1</sup> 1932 A. L. J. 521=1932 A. I. R. All. 460=16 R. D. 434.

<sup>2</sup> *Champa Kuer v. Pati Ram*, 33 I. C. 70=I U. D. 258.

<sup>3</sup> *Pirithi v. Bhagwan Das*, 5 L. R. Rev. 223=10 Rev. and Cr. L. J. 276=VI U. D. 176=1924 R. C. 314=8 R. D. 171.

<sup>4</sup> *Fateh Singh v. Ramrup*, II U. D. 696 ; *Lachmi Narain v. Sardar Kuar*, 1 U. P. L. R. (B. R.) 16=53 I. C. 190=B. R. 4 of 1919=5 R. and Cr. L. J. 163=III U. D. 29 ; *Brij Bhusan v. Collector*, 1936 O. W. N. 352 ; *Sri Prakash Singh v. Suraj Prasad*, V U. D. 62=3 L. R. Rev. 137=1922 R. C. 73=4 U. P. L. R. 75=7 R. D. 129 ; *Sheo Pearay v. Augarh*, IV U. D. 617=2 L. R. Rev. 156 ; *Ram Dhari Rai v. Mahabir Singh*, XII U. D. 265 ; *Ishar Din v. Shambhu*, X U. D. (H. C.) 54=10 L. R. Rev. 44=5 O. W. N. 495=110 I. C. 289 ; *Krishna Pal Singh v. Rameshar Baksh Singh*, XII U. D. (H. C.) 88=12 L. R. Rev. 183=15 R. D. 422 ; *Umrao v. Umrao*, X U. D. (H. C.) 166=10 L. R. Rev. 198 ; *Prag Prasad v. Sri Nath*, XII U. D. (H. C.) 41=12 L. R. Rev. 166=15 R. D. 13.

<sup>5</sup> *Nisar Ali v. Meghi*, B. R. 4 of 1913 ; *Shoraj Narain v. Jagan Nath Prasad*, XII U. D. (H. C.) 90=12 L. R. Rev. 183=15 R. D. 424 ; *Bhagwan Baksh v. Shafiussuman*, I U. D. 236 ; *Daulat Singh v. Sheo Nath*, 1929 A. I. R. All. 211=10 L. R. Rev. 179=X U. D. (H. C.) 143=114 I. C. 890=13 R. D. 223 ; *Jado Nath Singh v. Bhawani Prasad*, II U. D. 225 ; *Sheo Golam v. Ambika Prasad*, 5 O. L. J. 455=47 I. C. 930 ; *Bajrang v. Bhaiya Ambika Dat Ram*, II U. D. 389 ; *Mathura Prasad v. Uma Datt*, 1939 A. I. R. Oudh 106=1939 O. W. N. 171=1939 R. D. 99, but see *Mani Ram v. Wasai Ali*, VI U. D. (H. C.) 349=6 L. R. Rev. Oudh 25=1925 R. C. 99 ; *Sheo Dularey v. Sheo Shankar Baksh Singh*, 1927 A. I. R. Oudh 219=IX U. D. (H. C.) 55=9 L. R. Rev. 75=11 R. D. 155 ; *Baij Nath v. Ghani*, X U. D. (H. C.) 357.

possession,<sup>1</sup> but it does where only tenant rights are involved.<sup>2</sup> A claim is not *bona fide* after a competent court has decided against it.<sup>3</sup> In a claim between rival proprietors, one of whom sets up adverse possession, the section cannot be involved.<sup>4</sup>

Where in a suit for arrears of rent and ejectment under section 108 (2) and section 127 of the Oudh Act the defendant is proved to be an under-proprietor like the plaintiff and is recorded as *sirdar* of a plot contiguous to the one from which he is sought to be ejected, the two plots originally forming together one whole khasra plot, and is also found to be in adverse possession over 12 years, the section does not apply and the plaintiff should seek his remedy in a Civil Court.<sup>5</sup>

A mortgagee who has not paid the money left with him for payment to the mortgagor's creditors, cannot by suing under the section deprive the mortgagor of his equitable defence that he had not performed his part of the contract.<sup>6</sup>

Where after dispossessing a tenant the landholder puts in another person, describing him as sub-tenant, the dispossessed tenant cannot sue the person put in under this section for ejectment,<sup>7</sup> as he is not the occupier's landholder.

Where a tenant is dispossessed by a person claiming to hold through a zamindar on the basis of a registered lease the remedy of the tenant is under section 183 and not section 180, for even if the lease is invalid it does not prevent the claim from being a *bona fide* one so as to bring the case under section 183.<sup>8</sup>

Where the plaintiff alleges that a part of his holding has been made by revenue authorities a part of another holding, a suit to eject the person in whose favour such entry has been made, should go to a Civil Court.<sup>9</sup>

Where a tenant, though formally ejected, continued to cultivate the land without any break for any period, however short, the section will not apply to him,<sup>10</sup> specially if some of the landholders consent to his continued occupation.<sup>11</sup>

8. Otherwise than in accordance with the provisions of the law.—All that one has to see is whether any provision of the law justifies the taking of or retention of possession, which will be easier than

<sup>1</sup> *Ramphal v. Rampargat*, 4 Rev. and Cr. L. J. 84=III U. D. 86=5 R. D. 479; *Sri Autar v. Special Manager*, XII U. D. (H. C.) 160=12 L. R. Rev. 375=15 R. D. 673=135 I. C. 376.

<sup>2</sup> *Bindeshwari v. Gune*, 2 Rev. and Cr. L. J. 105=II U. D. 13=4 R. D. 483; *Jang Bahadur Singh v. Eshan Ali*, 5 O. C. 222.

<sup>3</sup> *Ram Lal Singh v. Kantu Siromani Singh*, I U. D. 155.

<sup>4</sup> *Bajrang Singh v. Ambika Datt*, II U. D. 389.

<sup>5</sup> *Chauharja Baksh Singh v. Raghubir Singh*, XVII U. D. (H. C.) 61=1936 R. D. 91=1936 O. W. N. 239=160 I. C. 1041.

<sup>6</sup> *Aventyle Prasad v. Gur Baksh*, 1924 A. I. R. Oudh 425=5 L. R. Rev. (O.) 85=1923 R. C. 595=85 I. C. 9=8 R. D. 474=11 O. L. J. 197=27 O. C. 60.

<sup>7</sup> *Banwari v. Rahman*, 4 Rev. and Cr. L. J. 151=III U. D. 117=5 R. D. 523.

<sup>8</sup> *Jamiluddin v. Chhotto*, 1941 R. D. 317.

<sup>9</sup> *Nazar Singh v. Lakhu*, 1935 A. L. J. 426=1935 A. I. R. All. 422=XVI U. D. 122=1935 R. D. 127.

<sup>10</sup> *Dep. Com. v. Gurdajal Singh*, 15 O. C. 311=17 I. C. 464.

<sup>11</sup> *Muthra Prasad v. Chotku Singh*, III U. D. 326.

ascertaining whether such act contravened any provision of the Act. The court will have to see whether the act was unauthorised by the enactment, and this was the meaning attached to "in contravention of the provisions of this Act" in *Muh. Muslim v. Maharania*.<sup>1</sup> In *Sri Ram Chandraj v. Raghu Nathji*<sup>2</sup> the words were held to mean "otherwise than in accordance with the provisions of the Act." Note the words "the law for the time being in force" *i. e.*, not only the present Act.

In *Tapesra v. Sugia*<sup>3</sup> it was held that a person in possession not able to justify his possession under any of the provisions of the Act of 1926 held in contravention of the Act.

As these words are placed they seem to qualify both (1) *taking* or (2) *retaining possession*. An instance of taking possession without consent and otherwise than in accordance with the provisions of the Act is furnished by a landlord taking possession of the holding of his tenant, the proper remedy for the tenant being a suit under section 183, see note 23 to section 3 *ante*. Under the Act of 1901, the tenant was held entitled to utilise section 34<sup>4</sup> (corresponding to present section 180.)

Two widows of a tenant succeed as one person. If one of them remarries, she loses her right and the other continues as sole tenant. On her death the landholder is entitled, on becoming aware of the remarriage, to treat the remarried widow as a trespasser<sup>5</sup>

The Act nowhere contains any express provision for taking possession of agricultural land, and one has to examine the various sections of the Act to ascertain what taking possession in accordance with the provision of the Act indicates. Let us consider how tenancies arise. With the exception of exproprietary tenancies, a tenancy springs from a contract express or implied.

Fixed-rate and permanent tenure tenancies may be left out of consideration as contracts for their orientation cannot be made now; so with non-occupancy tenancies. The cases to be considered are those of occupancy and hereditary tenancies.

The contract is between the owner or those who hold his interest and the person let or to be let into possession. The sole owner may create a tenancy. A person who is not an heir according to sections 35 to 37 taking possession of the last tenant's holding, *e. g.*, under the Act of 1926 a daughter's son who did not share in cultivation with him took possession otherwise than in accordance with the provisions of the Act.

Section 201 of the Act of 1926 empowered the *thekadars*, as does section 211 of this Act, to admit tenants. A person taking possession under

<sup>1</sup> 50 All. 1301—25 A. L. J. 545—1927 A. I. R. All. 369—VIII U. D. (H. C.) 224—8 L. R. Rev. 250—1927 R. C. 273—11 R. D. 180

<sup>2</sup> X U. D. 68—10 L. R. Rev. 299—13 R. D. 246.

<sup>3</sup> XV U. D. 221—15 L. R. Rev. 281.

<sup>4</sup> *Ganga Narain v. Manik Lal*, 1927 A. I. R. All. 727—8 L. R. Rev. 295—VIII U. D. (H. C.) 266—1927 R. C. 343—106 I. C. 207—11 R. D. 303.

<sup>5</sup> *Bundi v. Mustafa Husain Khan*, XVIII U. D. 267—1937 R. D. 417.

<sup>6</sup> *Abul Hasan v. Bhagmina*, XV U. D. 8—14 L. R. Rev. 818.

a lease or grant contrary to the provisions of the enactments referred brought and brings himself under section 180.

A suit is maintainable where defendant failed to prove that he was the legal heir to an occupancy tenant, and it was found that the legal heir was and then the question whether or not he had surrendered being immaterial.<sup>1</sup>

The transferee of a fractional share has a right to get his share separated by partition and to have plots allotted to him and demarcated, but in the meantime he cannot dispossess the proprietor from any particular plots which are in his exclusive possession as *sir*, as he cannot be regarded as a person not entitled to possession of that plot.<sup>2</sup>

Usufructuary mortgagees are in the same position as owners and may let tenants into occupation or grant reasonable agricultural leases.<sup>3</sup> A tenant let in by such a mortgagee in the ordinary course of management becomes under section 29 hereditary tenant.<sup>4</sup> The mortgagor has, as a rule, no power, during the continuance of the mortgage, to admit tenants.

A Hindu widow in possession as heiress is entitled to let in tenants in the ordinary course of management and such tenants become hereditary tenants. She could create occupancy rights only with the consent of the next owner.<sup>5</sup>

A trespasser on an estate though he is not the owner may create tenancies

The Court of Wards in possession of the estate is entitled to admit tenants, but the manager has no power to execute a lease without any term, nor can a *zildar* create a tenancy. See under note 10 to section 29 at p. 208 *ante*. The Court of Wards could confer occupancy rights only for consideration,<sup>6</sup> and could not delegate its powers.<sup>7</sup>

Section 245 shows that in the absence of a contract or usage, a *lambardar* may settle tenants, *i. e.*, create tenancies, but could confer occupancy rights under the Act of 1926 only with the consent or sanction required by section 17(1)(b) of that Act.

Any co-sharer in an undivided zamindari has no right to create tenancies in respect of any portion of the common land.<sup>8</sup> He could consent to the creation of occupancy tenures but could not create them.<sup>9</sup>

<sup>1</sup> *Bishwa Nath Saran Singh v. Sri Narain Singh*, 1938 A. I. R. Oudh 98.

<sup>2</sup> *Muh. Yahia Khan v. Alia*, 1930 A. I. R. Oudh 168—XI U. D. (II C.) 15.

<sup>3</sup> See note 24 to section 3; *Dasai v. Sheo Deo*, XIII U. D. 150.

<sup>4</sup> See *Muh. Mobin Husain v. Badan Singh*, XIII U. D. 163—13 L. R. Rev. 395.

<sup>5</sup> Section 17 (1) (j) of the Act of 1926.

<sup>6</sup> Section 17 (4) of the Act of 1926

<sup>7</sup> *Ib.*

<sup>8</sup> See note 24 to section 3 *ante* and section 246(1) *infra*.

<sup>9</sup> Section 17 of the Act of 1926.

The manager of a joint Hindu family may create ordinary tenancies.<sup>1</sup> He could create occupancy rights under the Act of 1926 only with the consent or sanction mentioned in section 17 (1) (g) of that Act.

The natural or certificated guardian of a minor proprietor may admit tenants in the ordinary course of management;<sup>2</sup> and could create occupancy tenures under the Act of 1926 with the sanction mentioned in section 17 (1) (f) of that Act.

A duly authorised agent or *mukhtar* of the owner or owners is entitled to settle tenants provided there is not collusion or fraud.<sup>3</sup>

Generally, a tenancy which is the result of a fraud does not arise from admission by the landholder.<sup>4</sup> The landholder may repudiate it, but until he does so the occupant is a tenant.

Recognition of a person as tenant due to misapprehension of facts is not admission to the tenancy.<sup>5</sup>

Artificial persons, such as corporations, *muths*, etc., may be tenants but could not have occupancy rights conferred on them.<sup>6</sup>

Any object which comes within the conception of land may form the subject of a tenancy, but occupancy rights cannot be created over groveland or pasture land; nor hereditary tenancies arise over *sir*, groveland, pasture land, or *singhara* tank.<sup>7</sup> Section 30 also exempts certain other land from being subject to such tenancies.

A was the occupancy tenant of a holding of a certain area. The *patwari* on his own authority in 1325 *F.* added to his holding a large piece of fallow land adjacent to the holding without any change in the recorded rent. In 1325 the zamindar sued A for enhancement of rent, describing his holding as entered in the *patwari* papers, and obtained an order for enhancement. The zamindar can subsequently have it declared that the block of fallow land was no part of the occupancy holding, because the tenant did not become tenant of the fallow land on account of the *patwari* erroneously showing him as such, and the misdescription of the holding in the enhancement suit did not estop the zamindar.<sup>8</sup>

Where a vendee refused to give back possession after the surrender in his favour had been refused sanction under section 15 of the Act of 1926 his possession was in contravention of the Act.<sup>9</sup>

A transfer of a rent free giant land not made expressly transferable or by its nature intransferable, was not in contravention of the provisions

<sup>1</sup> See note 24 to section 3 *ante*.

<sup>2</sup> As to a lease granted by him see note 24 (xix) to section 3 at p. 52 *ante*.

<sup>3</sup> See note 10 (xix) to sections 29 at p. 207.

<sup>4</sup> See note 10 (xix) to section 29 at p. 207.

<sup>5</sup> See note 10 (xvii, xviii) to section 29 p. 207.

<sup>6</sup> Section 17 (3) of the Act of 1926.

<sup>7</sup> Sections 29 and 30

<sup>8</sup> *Aditya Narain Singh v. Bholu Misra*, XIII U. D. 156=14 L. R. Rev. 68.

<sup>9</sup> *Shie Lal v. Bhola Nath*, XII U. D. 4.

of the Act, and the transferee could not be proceeded against under the section.<sup>1</sup>

This survey shows how tenancies may lawfully arise. Other occupation of land does not create tenancies and brings the case under section 180. A squatter, or a tenant resuming possession after due ejectment, is a trespasser.

9. **On the suit of the person entitled to admit a tenant.**—These words displace “landholder” of the Act of 1926. The change removes some of the difficulties felt under the Act of 1926 and the necessity of forced interpretation sometimes resorted to by revenue officers and judges.

Only the person so entitled may sue under the section. He may or may not be the zamindar or even a landholder as defined in the Act.

In some cases it had been held that as a tenant could not be the landholder he could not sue a person who had trespassed on his holding.<sup>2</sup> This was not accepted in other cases.<sup>3</sup> Where a person is entered as *kabiz* over the holding of a tenant and he is not proved to have obtained the consent of the tenant, the latter's remedy is a suit under this section and not ejectment as against a non-occupancy tenant.<sup>4</sup> But if the entry is that he is sub-tenant of the tenant, and there is nothing to disprove this entry, the tenant's remedy is a proceeding under section 175 and not a suit under this section.<sup>5</sup>

Where a partition between co-tenants has taken place, whether or not the landholder has agreed to it, one of them who has taken or continued in possession of the portion allotted to another may be sued by the latter under this section.<sup>6</sup>

Where a mortgage in contravention of the provisions of the Act has been created and the mortgagee let in possession the latter cannot be ejected by the mortgagor as a trespasser until the money transactions between the parties have been settled in a proper Civil Court proceeding.<sup>7</sup>

A private partition of *sir* plots does not destroy a co-sharer's right of ownership in the plots allotted to the share of the other co-sharer; and the former may sue a trespasser for demolition of constructions made on the plots allotted to the other co-sharer, but he is not entitled to a decree for joint possession.<sup>8</sup>

<sup>1</sup> *Bismilla v. Sher Ali Khan*, 14 L. R. Rev. 722=XIV U. D. 383.

<sup>2</sup> *Jhau Singh v. Chuttan Singh*, XII U. D. 83.

<sup>3</sup> *Mindhari v. Bhajan*, XIII U. D. 101=13 L. R. Rev. 156 following *Shao Lal v. Bhola Ram*, XII U. D. 4; *Bhajan Singh v. Ram Singh*, XIV U. D. 12=14 Rev. 14; *Shao Pal Ram v. Kalu*, 19 O. C. 370=37 I. C. 462.

<sup>4</sup> *Ram Subhag v. Niranjan Das*, XI U. D. 138.

<sup>5</sup> *Haswa v. Bishwa Nath*, 15 R. D. 20.

<sup>6</sup> *Kartari v. Umrao Singh*, XVII U. D. 386=1936 R. D. 525.

<sup>7</sup> *Bhagant Singh v. Ram Nath Singh*, XVIII U. D. 107=1937 R. D. 135.

<sup>8</sup> *Halder v. Ram Sumer*, 1939 A. L. J. 171=1939 R. D. 169.

The person referred to in section 180 must have been either a zamindar or occupying a position as such *e.g.*, his lessee.<sup>1</sup>

A lambardar ejected an exproprietary tenant for arrears of rent and took formal possession of the holding. At a partition 8 bighas of the land of the holding fell to the share of a co-sharer *M* who took actual possession of it a year after the partition took effect. The lambardar obtained by pre-emption certain specified plots not comprised in the 8 bighas and sued for ejection as a trespasser. As the lambardar was not a co-sharer in the patti to which the 8 bighas had been allotted, his suit was dismissed.<sup>2</sup>

A lambardar who has no proprietary interest in a khewat cannot sue to eject a trespasser on land therein.<sup>3</sup>

A female co sharer lambardar mortgaged usufructually her share to *A*, then took a theka of it from him. *A* ejected her for arrears of rent but as she did not give up actual possession of some of the land he sued her as a trespasser. She being the lambardar was the landholder, and hence could not be sued as trespasser, and the suit failed.<sup>4</sup> Now *A* would be the person entitled to give consent, and the decision will not hold good.

A trespasser<sup>5</sup> as such, cannot be a landholder, or a person entitled to give consent, and be entitled to sue under the section.<sup>6</sup> Where several persons own a zamindari or tenancy as joint holders or holders in common, all such persons together constitute the landholder in respect of the zamindari or tenancy right as the case may be and are entitled to give consent and not only one or some of them and hence a suit under the section must be brought by all and not only by some of them, unless they have appointed an agent to act on their behalf.<sup>7</sup> In the case of zamindari rights, the lambardar is such agent, and is entitled to do all acts incidental to the proper management of the estate with a view to the common benefit.<sup>8</sup> This would include ejection of trespassers and claiming compensation from them in respect of the trespass.<sup>9</sup>

Khalsa land is the common property of all the co-sharers and hence one of them cannot sue to eject an alleged trespasser, although it may be that once the land lay in a patti of which the plaintiff was in exclusive possession, but this patti with another possessed by other co-sharers was formed into one mahal, in which there were no separate

<sup>1</sup> *Puran v. Mansukh Ram*, 1933 A. I. R. All. 637.

<sup>2</sup> *Zalim Singh v. Mohan Singh*, 12 L. R. Rev. 197.

<sup>3</sup> *Hoor Jahan v. Atarsen*, XVIII U. D. 317—1937 R. D. 517.

<sup>4</sup> *Sewa Ram v. Reshi*, XIII U. D. 179—14 L. R. Rev. 56.

<sup>5</sup> *Syed Muh. Mehdi v. Ram Dei*, XII U. D. 59—12 L. R. Rev. 31—15 R. D. 158

<sup>6</sup> *Syed Muhammad v. Zahid Ali*, XV U. D. 195—15 L. R. Rev. 277.

<sup>7</sup> Section 246 (1).

<sup>8</sup> Section 246 (2).

<sup>9</sup> *Abdullah Khan v. Kanhaya*, 1930 A. L. J. 569—1929 A. I. R. All. 869—123 I. C. 106—13 R. D. 803.



pattis. The matter might have been different if the land had been plaintiff's *sir*.<sup>1</sup>

One co-sharer cannot sue although by private arrangement between the co-sharers he may be empowered to realise rents and eject.<sup>2</sup>

The expression "a person" with which the section opens is very wide and general, and hence includes even a co-sharer in the mahal who has trespassed on common land by taking exclusive possession of it as his *khudkasht* without the consent of the lambardar or the rest of the co-sharers.<sup>3</sup> The lambardar may sue him in a Civil Court or under this section. In the latter case only one or some of them cannot sue, section 246 must be kept in mind.

Section 246 refers to the tenant of a holding who is also a co-sharer. Such a person need not join as a co-plaintiff with the other co-sharers. But the word tenant limits the scope of the sub-section. The word tenant excludes a trespasser, though he be a co-sharer. It follows that a suit by the remaining body of co-sharers to eject the trespassing co-sharer who has taken some common land in his *khudkasht* is defective under section 246 and must fail.<sup>5</sup>

In some cases it had been said or held that any co-sharer may sue to eject a trespasser.<sup>6</sup>

Where a land is by custom or arrangement between the co-sharers the severalty of one of the co-sharers, he is the landholder in respect of it and the person entitled to consent, and if any person, though he be another co-sharer, takes or retains possession of it without his consent otherwise than in accordance with the provisions of the law, the co-sharer whose severalty it is, or his mortgagee<sup>7</sup> in respect of that portion of the land trespassed upon which has been mortgaged may sue alone. In this case the mortgagor had disappeared and had executed a *kabuliat* in favour of the mortgagee. A co-sharer who by arrangement between co-sharers collects the rent of a particular land is landholder in respect of it.

The land in the occupation of a co-sharer which has been trespassed upon and in respect of which a suit under the section has been

<sup>1</sup> *Ram Karan Singh v. Ram Baran*, 1938 A. L. J. (B. R.) 56=XIX U. D. 147=1938 R. D. 376.

<sup>2</sup> *Parbhoo v. Chater Sen*, 1938 A. L. J. (B. R.) 110=XX U. D. 77=1938 R. D. 789, relying on *Silo v. Kuria Singh*, XVII U. D. 106=1936 R. D. 114.

<sup>3</sup> See note 3 *supra*.

<sup>4</sup> *Raidal Singh v. Kurey Singh*, XVI U. D. 458=1935 R. D. 374.

<sup>5</sup> *Mahatam Rai v. Bindesri Rai*, XVI U. D. 315.

<sup>6</sup> *Imamuddin v. Faujdar Khan*, XII U. D. II. C. 96 ; *Jagat Bali Ram v. Badri Nath*, XVI U. D. 232 ; *Indarjit Partab Bahadur v. Badri*, XII U. D. 177=12 L. R. Rev. 311 ; *Sital v. Sarobjit*, XI U. D. 191 ; *Mahadeo Singh v. Kulwanta*, XVII U. D. 152=1936 R. D. 187, *Contra*, *Amir v. Choral*, III U. D. 409=4 R. D. 227.

<sup>7</sup> *Ramjidas v. Bakhtavar*, XIV U. D. 342=14 L. R. Rev. 666.

<sup>8</sup> *Allah Razvi v. Maharaj Singh*, XVI U. D. 301.

brought may be his unlet *sir* or *khudkasht*, for if it has been let out to a tenant, the co-sharer would have no *locus standi* at all under the section. It is an axiom of revenue law that *khudkasht* land though cultivated by one co-sharer is common land, unless some arrangement makes it his severalty and the person cultivating it is not the landholder in respect of it,<sup>1</sup> and hence a suit under section 44 of the Act 1926 in respect of it could not be brought by the cultivating co-sharer alone, but all the co-sharers had to join in it,<sup>2</sup> and a lessee from one of the co-sharers was no better than a trespasser as regards the others, and all co-sharers must have joined to eject him.<sup>3</sup> Under this Act, the validity of this ruling is doubtful, for one cannot say that such a co-sharer is not entitled to consent to the occupation or retention of occupation.

A suit by one of two co-sharers, the other of whom is the lambardar, should not be dismissed because the other (the lambardar) has not joined as plaintiff, if he has applied to be made a party, and in the latter case he should be made a party.<sup>4</sup>

As a co-sharer is entitled to his *sir* land he alone may sue under the section for a trespass in respect of it.

Where exproprietary rights arise on a transfer of the interest (or part interest) of one of several co-sharers, the exproprietor becomes the proprietary tenant of all the co-sharers and not of the transferor alone,<sup>5</sup> and hence in case of surrender of the holding by him, the land therein is at the disposal of the whole body of co-sharers. The transferor of the *sir* cannot exercise sole dominion over it, even if the rent was fixed at his instance only and cannot eject as trespasser the lambardar who has taken possession of it.<sup>6</sup>

As regards tenancy land trespassed upon, the person if any entitled to sue is the tenant,<sup>7</sup> even though the trespasser be a co-sharer.<sup>8</sup>

A zamindar may sue although his estate has been attached by the Collector for default in paying the land revenue.<sup>9</sup>

Where a person, who is a co-sharer to the extent of one-half of some joint *sir* land mortgaged, redeems it alone but his request to have the

<sup>1</sup> *Ram Sarup v. Khachru*, XV U. D. 232=15 L. R. Rev. 367.

<sup>2</sup> *Gopal Singh v. Nankar*, 14 L. R. Rev. 373.

<sup>3</sup> *Mahadeo Singh v. Kulwanta*, XVII U. D. 152, 179=1936 R. D. 187.

<sup>4</sup> *Ram Dayal v. Budh Singh*, XIX U. D. 131=1938 R. D. 323.

<sup>5</sup> See note 8 to section 26 at page 150 para. beginning "where a fractional co-sharer."

<sup>6</sup> *Janki Das v. Data Ram*, XIV U. D. 1=14 L. R. Rev. 120, *Roshan Lal v. Rafiuddin*, 13 L. R. Rev. 192.

<sup>7</sup> *Sheo Dat Singh v. Kals*, 19 O. C. 370; *Tauro Shankar v. Ram Bilas*, IV U. D. 207; *Ram Harakh v. Basdeo*, IV U. D. 653, *Umrao Khan v. Ram Bali*, V U. D. 557=4 L. R. Rev. 343=7 R. D. 345, but see *Badlu v. Ramzan*, 4 O. C. 24; *Bhagwan Dat v. Ram Dhan*, I U. D. 282=2 O. L. J. 352=30 I. C. 206; *Rudra Pratib v. Hauslu Prasad*, 1924 A. I. R. Oadh 295=VI U. D. (H. C.) 164.

<sup>8</sup> *Rajjab Husain v. Alopi*, XX U. D. 197=1939 R. D. 202.

<sup>9</sup> *Pahlad Singh v. Bansidhar*, XVIII U. D. 359=1937 R. D. 581.

whole recorded as his *sir* is refused and he is recorded as *sir*-holder of one-half only, but there is nothing to show that effect was given to this order, the mortgagee if in possession cannot be treated as a trespasser and cannot be ejected at the suit of the person who has redeemed.<sup>1</sup>

If plaintiff alleging himself to be an occupancy tenant sues the person in possession under the section the suit is liable to dismissal if the plaintiff is found not to have been in possession as occupancy tenant and therefore a person to whom rent is payable.<sup>2</sup>

10. To maintain a suit under the section, there is no necessity of demarcation of the land in dispute if it is identifiable.<sup>3</sup>

11. **And also to pay damages.**—The suit for ejectment and for damages should be brought together. Damages cannot be recovered after ejectment.

(Only a suit for damages may be brought under the section.<sup>4</sup>

Damages cannot be awarded against a person who is not a trespasser but supports a trespasser.<sup>5</sup>

The court is bound to assess fair damages also, and should not decree for ejectment only.<sup>6</sup>

In the absence of statutory rates and other evidence, four times the present rent may be taken as the measure of damages.<sup>7</sup>

The measure of damages is the selling value of the crops *minus* the cost of cultivation.<sup>8</sup>

The amount of damages does not depend on the number of years during which the trespass has continued. They can be awarded at the discretion of the court provided they did not exceed four years' annual rent calculated according to the section.<sup>9</sup> The court is given discretion as to the amount of damages. Normally some damages should be allotted.<sup>10</sup>

12. The suit is item No. 18 in Group B of the 4th Schedule, and is triable by an Assistant Collector of the first class with a right of appeal to the Commissioner. The court-fee is payable on the rent as in the Court fees Act. There is a limitation of 3, 6 or 12 years according to different circumstances of the case.

<sup>1</sup> *Gur Sahai Singh v. Bagha Singh*, XV U. D. 113—15 L. R. Rev. 311.

<sup>2</sup> *Nazir Hasan v. Latif Hasan*, 15 L. R. Rev. 629—XV U. D. 374.

<sup>3</sup> *Benoy Ratna Banerjee v. Mannu*, XVII U. D. 18—1936 R. D. 32.

<sup>4</sup> *Chiddu Singh v. Nathu Ram*, 14 L. R. Rev. 145—XIV U. D. 58 ; *Man Singh v. Sunder Singh*, XVI U. D. 31 ; *Har Swarup v. Tannu Singh*, XVI U. D. 32.

<sup>5</sup> *Munna Lal v. Jiwan Ram*, XV U. D. 498.

<sup>6</sup> *Shaukat Husain v. Beni Ram*, 9 L. R. Rev. 339—IX U. D. 163.

<sup>7</sup> *Hausila Singh v. Gajai*, 11 L. R. Rev. 64—XI U. D. 45.

<sup>8</sup> *Partab v. Gopi Ram*, XVI U. D. 494.

<sup>9</sup> *Kartari v. Umrao Singh*, XVII U. D. 386.

<sup>10</sup> *Pirthi Singh v. Madan Lal*, 1941 R. D. 170.

*Enforcement of ejectment.*

**181.** (1) Every decree or order for ejectment shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, relating to the execution of decrees for delivery of immovable property.

Mode of execution of  
decree or order.

(2) Every sub-lessee or transferee whose interest is extinguished on the ejectment of his landholder or transferor, as the case may be, shall for the purpose of the execution of the decree or order for ejectment, be deemed to be a judgment-debtor, but unless he offers resistance or obstruction to delivery of possession, he shall not be liable for costs.

1 This section reproduces section 93 of the Act of 1926, without the proviso to sub-section (1) thereof. Section 93(1) of the Act of 1926 corresponded to sub-section (1) of section 71 of Act II of 1901.

2. A decree for ejectment is passed in a suit under section 171 or section 172 or section 180 ; an order for ejectment is passed in a proceeding under section 54, sections 165, 168, 169 or 170, or section 175. The execution is to be according to the Code of Civil Procedure for execution of decrees for delivery of possession, such provisions being contained in Order 21, Rules 35 and 36.

Sub-section (2) must, however, be kept in mind. A sub-lessee or transferee of the person to be ejected whose interest is extinguished on the ejectment is deemed to be bound by the decree within the meaning of Rule 36 of Order 21, C. P. C. See sections 39 to 48 as to transfers and sub-leases which are and which are not extinguished on the ejectment of the tenant.

Where in execution of a decree or order for ejectment the provisions of Order 21, Rule 35, (1) are complied with, the tenant is duly ejected, and it is not necessary that the tenant should have been made aware of the ejectment.<sup>1</sup>

Order 21, Rules 100 and 101, C. P. C. apply to these proceedings.<sup>2</sup>

3. Rules made by the Board of Revenue<sup>3</sup> to give effect to this section are given below.<sup>3</sup>

**Rules to give effect to section 181 of the Act.***Delivery of possession.*

**78.** Every application for the execution of a decree or order for the ejectment of a tenant shall, except when it is second or subsequent application for the execution of the same decree or order, be accompanied by a certified copy of the decree or order.

Copy of decree to  
accompany execution  
application.

<sup>1</sup> *Gajraj Singh v. Emperor*, 1935 A. I. R. All 1938=1935 A. L. J. 1108=XVI U. D. 648=1935 R. D. 491.

<sup>2</sup> *Deo Saran Lal v. Sripal Singh*, B. R. 4 of 1925=VI U. D. lxxvii.

<sup>3</sup> The rules framed by the Board of Revenue entitled by the U. P. Tenancy (Board of Revenue) Rules, 1940, were published in the U. P. Gazette of 13th of July, 1940.

**79.** Delivery of possession in execution of a decree or order for ejectment shall be made by the *qurq amin* who, on his arrival in the village, shall send notice to the tenant, and, in case there is any sub-tenant, to such sub-tenant also. The ejectment shall be made on the spot (not at the village *chaupal*), and from each field separately in the manner provided in rule 36 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) in the presence of the tenant, if he is in the village, and of two villagers whose names should be mentioned in the *qurq amin's* report. If the tenant is not present in the village, or refuses to attend, the *qurq amin* shall record the fact in his report. If at the time of the delivery of possession there exist on the holding any ungathered crop or any trees of which the value has not been determined by the court, the *amin* shall state in his report the kind of crop and his estimate of its probable value, and the kind, number, and estimated age and value of the trees. The report shall be signed by the landholder or his agent to whom delivery is made, and by the tenant, if present, and the parties shall be directed to apply, if they wish to do so, to the court executing the decree, for the settlement of the value of such crops and trees. If the patwari is present in the village, the *qurq amin* shall ask him to attend, and shall see that the patwari makes a record of the ejectment in his diary as directed in the rules relating to patwaris. In case any party refuses to sign the report, the *amin* shall record the fact.

**80.** When delivery of possession has been made in accordance with the preceding rule, the *qurq amin* shall submit his report with the particulars required by the said rule to the court which issued the warrant for delivery of possession.

**182.** (1) Delivery of possession in execution of a decree or order for ejectment of a civil or revenue court, shall not be made before the first day of April or after the thirtieth day of June in any year :

Provided that the Provincial Government may by rule prescribe in respect of any local area other dates between which delivery of possession shall be made.

(2) Nothing in this section shall apply to an order of delivery of possession passed after the first day of June in respect of an application for execution made before the preceding first day of April or to an order of ejectment passed under the provisions of section 165 or section 170 or section 180.

1. The section reproduces mostly section 94 of the Act of 1926, which corresponded to section 73 of Act II of 1901 with slight additions and subtractions, and corresponds to section 63 of the Oudh Act. Sub-section (1) is in effect sub-section (1) of section 94 of the Act of 1926. The reference to section 180 in sub-section (2) which

in the Act of 1926 overrides *Chuttan Lal v. Muhammad Abdus Samad Khan*.<sup>1</sup>

Sub-section (2) legalises actual delivery of possessions after the 30th of June, on an order for ejectment made after the first of June, on an application for execution made before the first of April. It was part of section 94(1) of the Act of 1926.

**2. Shall not be made.**—This is imperative and delivery of possession cannot be made before the first of April or after the 30th of June, except as provided in the section, even where the decree for ejectment was passed before the Act, but put into execution after.<sup>2</sup>

Ejectment is effective even if possession is given to the decree-holder who is not the lambardar or sharor at the time in the mahal formed after partition, in which the land is situate.<sup>3</sup>

Where formal delivery of possession is postponed to shortly after the beginning of the next Fasli year, the ejectment takes effect from the beginning of that year.<sup>4</sup>

Some of several co-tenants holding a decree for the ejectment of a sub-tenant cannot be allowed to nullify the decree and ejectment carried out by the others by obstructive tactics.<sup>5</sup>

Where owing to unavoidable delay, possession was not delivered within limitation, opportunity to show cause should be given to the tenant on a subsequent application.<sup>6</sup>

**3.** Rules made by the Provincial Government<sup>7</sup> to give effect to this section are given below.

#### Rules to give effect to the provisions of section 182 of the Act.

**14.** Under section 182, Government have prescribed for the different divisions the following dates before which delivery of possession of land in execution of decree or order of ejectment of a civil or revenue court shall not be made :

- |   |        |             |
|---|--------|-------------|
| (1) Gorakhpur, Benares and Fyzabad Divisions                          | ...    | 15th April. |
| (2) Allahabad, Jhansi, Kumaun, Rohilkhand, Agra and Lucknow Divisions | ... .. | 1st May.    |
| (3) Meerut Division   | ... .. | 16th May.   |

<sup>1</sup> B. R. 6 of 1929=XI U. D. (B. R.) 3=11 L. R. Rev. 59=14 R. D. 3; *Muhammad Jafar Ali v. Afzal Husain*, VI U. D. 256=5 L. R. Rev. (O.) 168.

<sup>2</sup> *Chhedi Singh v. Kunwar Prasad*, XII U. D. 322=15 R. D. 795; *Tribhuvan Das v. Itraj*, IV U. D. 350=2 L. R. Rev. 32=7 R. and Cr. L. J. 89, see also *Puran Prasad v. Jai Raj*, R. R. 8 of 1891; *Durga Prasad v. Girdhari*, B. R. 9 of 1900.

<sup>3</sup> *Babu Khan v. Bhairon Prasad*, I U. P. L. R. (B. R.) 33=54 I. C. 292=III U. D. 354, 676=4 R. D. 423

<sup>4</sup> *Gajadhar Prasad v. Mulchand*, 9 Rev. and Cr. L. J. 106=1922 R. C. 569=V U. D. 314=4 L. R. Rev. 68=7 R. D. 548; *Ahsanullah v. Edu*, 1923 R. C. 434=4 L. R. Rev. 324=VI U. D. 17=8 R. D. 114.

<sup>5</sup> *Randhir v. Sahodra*, III U. D. 633=4 R. D. 462.

<sup>6</sup> *Katwaru v. Mohan*, III U. D. 348=4 R. D. 171.

<sup>7</sup> Rules made by the Provincial Government in exercise of the powers conferred by section 292 to give effect to the provisions of this Act and entitled the United Provinces Tenancy (Government) Rules, 1940, were published on the U. P. Gazette dated 13th April, 1940, Miscellaneous Notification No. 114/1-39 dated 8th April, 1940.

*Remedies for wrongful ejectment.*

183. (1) Any tenant ejected from or prevented from obtaining possession of his holding or any part thereof, otherwise than in accordance with the provisions of the law for the time being in force by—

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ejectment.

- (a) his landholder or any person claiming as landholder to have a right to eject him, or
- (b) any person admitted to or allowed to retain possession of the holding by such landholder or person, whether as tenant or otherwise,

may sue the person so ejecting him or keeping him out of possession—

- (i) for possession of the holding ;
- (ii) for compensation for wrongful dispossession ; or
- (iii) for compensation for any improvement he may have made :

Provided that no decree for possession shall be passed where the plaintiff at the time of the passing of the decree, is liable to ejectment in accordance with the provisions of this Act within the current agricultural year.

(2) If the decree is for possession no compensation for an improvement shall be awarded.

(3) When a decree is given for compensation for wrongful dispossession but not for possession, the compensation awarded shall be for the whole period during which the tenant was entitled to remain in possession.

(4) A tenant who has sued for possession only shall not be entitled to institute a separate suit for compensation for wrongful dispossession, or for an improvement in respect of the same cause of action.

1. The section reproduces mostly section 99 of the Act of 1926 and corresponds to section 90(2) and section 108 (c), (10) and (10b) of the Oudh Act. In clause (b) "any person admitted to or allowed to retain possession of the holding by such landholder or person" displace "any person claiming through such landholder or person." "Or rent-free grantee" has been dropped out from sub-section (1) occurring in the Act of 1926 after the word "tenant." But in view of the provisions of section 198 this section is applicable to rent-free grantees also.

2. **A tenant.**—See section 3 (23). The right of suit is given to a 'tenant' as defined by the Act. A tenant of grazing land comes within

the expression.<sup>1</sup> A person not a tenant or under-proprietor (*vide* s. 155) cannot sue under the section, although rent was received from him under a mistaken belief as to his tenancy.<sup>2</sup> If the brother of a tenant left in charge during his absence is forcibly ejected, he can sue under the section on behalf of his absent brother although he has no power of attorney.<sup>3</sup> A tenant of a *thekadar* holding over after the expiration of this tenancy was a tenant.<sup>4</sup>

Person recorded as holding *bila tasfia lagan* may sue either under section 180 or section 183, non-payment of rent being immaterial.<sup>5</sup>

The section would not apply in case of accrual of *ex-proprietary rights* until the area over which such rights have accrued has been defined,<sup>6</sup> and in any case section 5, Limitation Act, may be applied to extend the period of limitation,<sup>7</sup> which begins to run from the date of the definition of the area.<sup>8</sup>

Where an exproprietary tenant had sued to have his status declared, a suit by him under section 108 (10), Oudh Act, for recovery of possession of his holding (now under this section) was held to be in time if instituted within the period of limitation from the date of the final order in the suit.<sup>9</sup>

So if it was brought within the period of limitation from the date of the Collector's order under section 36, Land Revenue Act.<sup>10</sup>

An ex-proprietary tenant who has actually relinquished his holding is no longer a tenant entitled to sue under the section.<sup>11</sup>

Relinquishment by an unregistered and compulsorily registrable deed, though in pursuance of an agreement to surrender, will not destroy the person's status as tenant.<sup>12</sup>

If he impugns the surrender as illegal, a suit by him to recover possession of the holding must be brought within the period of limitation for this section.<sup>13</sup>

<sup>1</sup> *Gaya Din v. Raj Bahadur*, VII U. D. 53=1925 R. O. 548.

<sup>2</sup> *Muhammad Mehdi v. Ram Dei*, 12 L. R. Rev. 31=XII U. D. 59.

<sup>3</sup> *Nabi Haidar v. Ram Prasad*, XII U. D. 133=15 R. D. 469.

<sup>4</sup> *Sansar Din v. Kalka Prasad*, III U. D. 149.

<sup>5</sup> *Saida Bibi v. Wali Mohammad*, 1938 A. L. J. (B. R.) 30.

<sup>6</sup> *Heera Singh v. Gajju Singh* XIII U. D. 180=14 L. R. 53.

<sup>7</sup> *Rachala Kuar v. Sheo Gobind Rai*, IV U. D. 472=7 Rev. and Cr. L. J. 161=4 U. P. L. R. (B. R.) 33=2 L. R. Rev. 70=5 R. D. 248 ; *Bejoy Bahadur v. Prag Das*, IX U. D. 108=10 L. R. Rev. 246=12 R. D. 826.

<sup>8</sup> *Rajpat v. Chandrapat*, XVI U. D. 550.

<sup>9</sup> *Sheo Shankar Lal v. Sheo Prasad*, II U. D. 217.

<sup>10</sup> *Sarjoo Prasad v. Salik*, IV U. D. 400.

<sup>11</sup> *Darogha Lal v. Sri Nath*, VIII U. D. 119=8 L. R. Rev. 348=1927 R. O. 412=X U. D. 133=10 L. R. Rev. 206=11 R. D. 573 ; *Raghubar Dayal v. Sri Shambhu Prasad*, VII U. D. 5=1926 R. O. 107=7 L. R. Rev. 110=12 R. and Cr. L. J. 118=10 R. D. 3.

<sup>12</sup> *Ram Nath Baksh Singh v. Special Manager*, XII U. D. 159.

<sup>13</sup> *Pirithi Lal v. Muhammad Jafar*, XI U. D. 80=11 L. R. Rev. 108=14 R. D. 312 ; *Heera Singh v. Gajju Singh*, XIII U. D. 180,



Where the *shikmi* of an ex-proprietary tenant purchases the proprietary rights in the land, he becomes the landholder of the ex-proprietor. If the latter obtained a decree for ejectment of the former as *shikmi* but did not obtain actual possession, in a civil suit by the ex-proprietor against the former *shikmi* for ejectment as a trespasser, it was held that the *shikmi* as the landholder had wrongfully ejected the ex-proprietary tenant who should sue under section 183, and if no such suit was brought within limitation, the land became the *khudkasht* of the landholder.<sup>1</sup>

**3. Person occupying without consent.**—A person who has entered into occupation of land without the consent of the landholder cannot be said to be a tenant.<sup>2</sup>

A tenant who on being wrongfully dispossessed by his landlord does not seek the proper remedy for restoration but otherwise dispossesses the latter is a trespasser.

A tenant duly ejected, *e. g.*, under section 171, cannot sue to recover possession under this section.<sup>3</sup>

Where a surrender has been accepted and possession delivered by the court to the zamindar the tenant repudiating must sue under section 183 and not under section 59.<sup>4</sup>

A tenant who has abandoned cannot sue under section 183 after the finding of the court that the tenancy was extinguished thereby.<sup>5</sup>

**4. Usufructuary mortgagee of holding.**—The mortgagee of an intransferable holding, *e. g.*, an occupancy holding since 1902, is not a tenant,<sup>6</sup> though he has been paying rent direct to the landholder. Suppose the mortgage was made before 1902. In the case of a transferable holding such as a fixed-rate holding, it was held in one case by the Allahabad High Court, that the mortgagee if he paid rent direct to the zamindar was a tenant who could sue under section 79 of Act II of 1901,<sup>7</sup> (present section 183) but in a later case<sup>8</sup> the same court held that such a mortgagee did not become the tenant, as, in spite of the mortgage, the mortgagor remained the tenant and to infer a tenancy in the mortgagee from the payment of rent is to say that the mortgagor's tenancy has come to an end—an impossible position.

<sup>1</sup> *Gauri Ganesh v. Bankey Lal*, XII U. D. 229=15 R. D. 667.

<sup>2</sup> *Hurbhajan Singh v. Behari Baksah*, B. R. 8 of 1903; *Sheo Nandan Singh v. Lachman Rai*, 29 I. C. 447=I U. D. 190=1 R. and Cr. L. J. 79; *Muhammad Mehdi v. Ram Dei*, XII U. D. 59=12 L. R. Rev. 31; *Contra*, *Wazir Khan v. Bhiggan*, IV U. D. 821=6 R. D. 399. See also *Risal Singh v. Matar Behari*, B. R. 6 of 1925.

<sup>3</sup> *Vivek Singh v. Ram Lal*, 1938 A. L. J. (B. R.) 119.

<sup>4</sup> *Mahadeo v. Muhammad Rizwanullah*, XX U. D. 337=1939 R. D. 375.

<sup>5</sup> *Deputy Commissioner v. Bindra*, XX U. D. 361=1939 R. D. 418.

<sup>6</sup> *Gauri v. Ram Lagan*, V U. D. 222=9 R. and Cr. L. J. 1=1922 R. C. 258=4 U. P. L. R. (B. R.) 35=3 L. R. Rev. 513=7 R. D. 415

<sup>7</sup> *Ram Narain Singh v. Rampat*, 10 A. L. J. 178=8 I. C. 1007.

<sup>8</sup> *Saudagar Singh v. Ganga Singh*, 19 A. L. J. 702=1921 A. I. R. All. 110=IV U. D. 736=6 R. D. 318=7 R. and Cr. L. J. 219.

Recently the Board has held that both the mortgagor and the mortgagee constitute the tenant of the mortgaged holding.<sup>1</sup> There is no doubt that on wrongful dispossession of the mortgagee the mortgagor may sue under the section.<sup>2</sup>

5. **Sub-tenant.**—What has been said as to mortgagees applies mostly to sub-tenants. A sub-tenant can sue the tenant under this section. Should he be dispossessed by the zamindar without any collusion or connivance, on the part of the tenant-in-chief, will section 183 apply? The zamindar is certainly not his landholder, or a person claiming as landholder to have a right to eject, or a person claiming through the landholder or such person.<sup>3</sup> In *Tilai v. Ram Narain*,<sup>4</sup> the zamindar or his *thekadar* who had actually dispossessed a sub-tenant was held not to be the latter's landholder. Even if the tenant-in-chief had relinquished his holding which was in the occupation of the sub-tenant, it was held in Oudh that since his landholder, the tenant-in-chief, had not dispossessed him, the zamindar who had dispossessed him could not be sued under the section.<sup>5</sup> The High Court held that such a suit lay in a Revenue Court as the person dispossessing was a landholder though not of the plaintiff, as the word *his* was not used<sup>6</sup> before the word "landholder" in the latter part of section 99 (1) (a) of the Act of 1926 (now section 183 (1) (a)). If correct it will hold good now. As will be seen presently a great deal depends upon the allegations in the plaint.<sup>7</sup>

A zamindar taking possession of a holding by favour of the sub-tenant, is technically a sub-tenant and may be ejected as such with the sub-tenant, although his possession has extended beyond the period of limitation for a suit under section 183 and his possession is not adverse to the tenant.<sup>8</sup>

6. **Alluvial accretion.**—As regards land added to a holding by alluvion, it becomes a part of the holding and hence there is no question of the application of section 180 to such land.<sup>9</sup>

7. **Encroached land.**—Where a tenant encroaches on the land of his landholder, he is a trespasser as regards the portion encroached upon. The landholder may sue to eject him therefrom or sue for enhancement of rent; but until he takes the latter course, the tenant remains a trespasser,

<sup>1</sup> *Kunj Behari Singh v. Lakhpat*, XVIII U. D. 233=1937 R. D. 329.

<sup>2</sup> *Ram Narain v. Hashim Ali Khan*, III U. D. 355=1 U. P. L. R. (B. R.) 33=4 I. C. 293=4 R. D. 177, 422.

<sup>3</sup> *Shyam Lal v. Hira Nath*, 1934 A. I. R. All. 685=1934 A. L. J. 566=XV U. D. (H. C.) 130=15 L. R. Rev. 403=18 R. D. 306.

<sup>4</sup> III U. D. 281=4 R. D. 104.

<sup>5</sup> *Abdul Khan v. Thakur Prasad*, IV U. D. 287.

<sup>6</sup> *Govind Prasad v. Kandhai Singh*, 1935 A. I. R. All. 631=1935 A. L. J. 1057=XVI U. D. 479.

<sup>7</sup> So held under Act 18 of 1873; *Katian Das v. Tika Ram*, 2 All. 137; *Muazzam Ali v. Sheo Prasad*, 7 N. W. P. 259.

<sup>8</sup> *Debi Prasad v. Nasir Khan*, 14 L. R. Rev. 94=XIV U. D. 38.

<sup>9</sup> *Chandmal v. Bhagwan*, II U. D. 680.

and if he is turned out by the zamindar, he cannot have recourse to section 183.

8. Or prevented from obtaining possession.—This settles a conflict of authorities under the Act of 1901,<sup>1</sup> in favour of a person entitled to possession but prevented from obtaining it.

Under section 108 (10) of the Oudh Act, where the suit contemplated was for the recovery of occupancy of land, the word "occupancy" was held to mean physical possession of a holding by cultivation; and it was also held that a plaintiff who had never been in actual possession could not sue the person who prevented him from collecting his share of the profits.<sup>2</sup> A similar view was held by the Board.<sup>3</sup> These rulings seem to ignore the words "or prevented from obtaining possession."

The expression *otherwise than in accordance with the provisions of the law for the time being in force* qualifies these words also. The following are instances:—preventing the lawful heir of a deceased tenant from taking possession,<sup>4</sup> either by putting in another man or collecting rents from sub-tenants, or being in physical occupation;<sup>5</sup> not allowing possession to a mortgagee of a transferable holding who has, after the ejectment of the tenant, purchased it in execution of his decree on the mortgage;<sup>6</sup> not permitting the lessee of certain property from the zamindar to obtain possession because of a sale by him to another person;<sup>7</sup> not permitting a *sir* owner of mortgaged

<sup>1</sup> See the cases cited in footnotes 4 on this page to 3 on next page.

<sup>2</sup> *Chandika Baksh Singh v. Raghu Nath*, 16 O. C. 105=18 I. C. 284; *Gaya Din v. Lodhi*, VIII U. D. (H. C.) 144=8 L. R. Rev. 145=4 O. W. N. 109=1927 R. C. 145; *Abbas Ali Khan v. Muhammad Khan*, Sel. Ca. No. 243; *Ashiq Ali v. Ghulam Sarwar*, VI U. D. (H. C.) 140=5 L. R. Rev. (O.) 7=1923 R. C. 210=74 I. C. 553=1924 A. I. R. Oudh 175=11 O. L. J. 18=8 R. D. 47; *Gaya Din Singh v. Chauhanraja*, 10 O. L. J. 178=73 I. C. 238=1924 A. I. R. Oudh 14; *Raghubar Dayal v. Chandan*, 10 O. C. 23, 27, but see *Fateh Muhammad v. Bhawani*, 14 O. C. 60.

<sup>3</sup> *Ram Das Singh v. Udit Narain Singh*, 1939 A. L. J. (B. R.) 53=XX U. D. 189=1933 R. D. 179.

<sup>4</sup> *Bidya v. Daryai*, VI U. D. H. C. 124=5 L. R. Rev. 184=1924 R. C. 226=10 R. and Cr. L. J. 254=1924 A. I. R. All. 678=9 R. D. 407; *Aidal Singh v. Gyan Singh*, VI U. D. H. C. 243=5 L. R. Rev. 257=10 R. and Cr. L. J. 297=79 I. C. 318=1924 R. C. 164=1924 A. I. R. All. 615=9 R. D. 415; *Muh. Zafur Yab Khan v. Abdul Razzak Khan*, 26 A. L. J. 820=IX U. D. H. C. 183=9 L. R. Rev. 238=111 I. C. 238=1928 A. I. R. All. 532=12 R. D. 421; *Gaya Din v. Lodhi*, VIII U. D. H. C. 144=8 L. R. Rev. 145=1927 R. C. 145.

<sup>5</sup> *Ram Lal v. Chunns Lal*, 27 All. 372=2 A. L. J. 69=24 A. W. N. 281; *Beni Rai v. Parbati*, 13 A. W. N. 196; *Birham Khushal v. Sumera*, 11 A. L. J. 310=18 I. C. 957=35 All. 299; *Nakched v. Gulab*, II U. D. 32; *Gaya Sahu v. Mendhai*, II U. D. 431.

<sup>6</sup> *Collector of Benares v. Shiam Das*, 13 A. L. J. 329, see *Abdul Hasan v. Makhdum Baksh*, 15 A. L. J. 502=39 All. 455.

<sup>7</sup> *Sukhdeo v. Sheobhajan*, 24 A. W. N. 172.

*sir*, in whose favour exproprietary rights have arisen on a sale of his proprietary rights, to obtain possession of the holding ;<sup>1</sup> not permitting the auction purchaser of the mortgagee of the interest of a lessee under a lease which conferred on him transferable rights to obtain possession, as the zamindar defendant had ejected the tenant under section 59 of Act II of 1901<sup>2</sup> (present section 168) ; the vendee not allowing the vendor to take possession of his exproprietary holding, the tenant having first relinquished the exproprietary rights and then almost immediately reprobated the relinquishment.<sup>3</sup>

A person to whom a lease has been given over the head of a setting tenant cannot sue the latter under this section.<sup>4</sup>

If a lawful heir does not obtain possession, but other persons do and are ejected by landholder as trespassers, a suit by the lawful heir more than 3 years after he become entitled to possession, *i. e.*, death of the tenant, will be time-barred.<sup>5</sup>

Note the words " provisions of the law for the time being in force." The Act of 1926 had the words " provisions of this Act " which showed that the section applied only to dispossession after the Act came into force and not to dispossession before the commencement of the Act.<sup>6</sup> Now the words have been changed and the section will apply to any dispossession whether before or after the commencement of the Act, provided it was not in accordance with the provisions of the law for the time being in force.

**9. Tenant ejected from his holding.**—This is necessary to bring in the section.

To make the section applicable there must be dispossession ; mere cutting and misappropriation of crops is not necessarily dispossession. Hence a suit for compensation for the crops is cognisable by a Civil Court unless dispossession is also proved.<sup>7</sup>

<sup>1</sup> *Ram Dat v. Bal Karan*, V U. D. 528 ; *Ali Raza Khan v. Muh. Zafar Khan*, XI U. D. H. C. 128—11 L. R. Rev. 50—1930 A. I. R. All. 311—127 I. C. 588—14 R. D. 150.

<sup>2</sup> *Bahadur v. Moti Chand*, 47 All. 589—23 A. L. J. 409—6 L. R. Rev. 133—VI U. D. H. C. 458—1925 R. C. 276—11 R. and Cr. L. J. 183—1925 A. I. R. All. 580—88 I. C. 224—9 R. D. 181.

<sup>3</sup> *Kishan Sahai v. Dalip Singh*, VII U. D. H. C. 216—7 L. R. Rev. 387—1926 R. C. 483—1927 A. I. R. All. 125—98 I. C. 907—9 R. D. 213.

<sup>4</sup> *Ram Jag v. Baiidehi*, XX U. D. 330—1939 R. D. 122.

<sup>5</sup> *Dwarka v. Nagashar*, XV U. D. 331—15 L. R. Rev. 562.

<sup>6</sup> *Ram Karan Singh v. Ram Das Singh*, 54 All. 297, (F. B.)—1931 A. L. J. 1018—1931 A. I. R. All. 635—15 R. D. 815 ; *Sheo Shanker Singh v. Sangram Singh*, 1938 A. L. J. 373—1938 A. I. R. All. 259—XIX U. D. (H. C.) 52.

<sup>7</sup> *Khushi Ram v. Manta*, 1931 A. L. J. 692—1931 A. I. R. All. 699—133 I. C. 539—15 R. D. 564—XII U. D. (H. C.) 180—12 L. R. Rev. 331 ; *Ram Saran Das v. Har Kishan*, 18 A. L. J. 434—58 I. C. 54—IV U. D. 769—6 R. D. 348.

This distinction between actual dispossession from the land and cutting of crops is deemed doubtful by the Board.<sup>1</sup>

If both dispossession from land and cutting of crops exist there can be no doubt that a revenue court is the proper forum for recovery of the value of the crops.<sup>2</sup>

Granting a lease to another, even to a member of a branch of the Hindu family to which an occupancy holding once belonged, on a separate and distinct contract, is ouster of the family, and any other branch or member of the family must assert his rights within limitation from the date of the lease.<sup>3</sup>

A gave a lease of a village, including *mal* and *sayar* items, to B; and during the continuance of the lease allowed other persons to enter on a part of the property leased, and to dig earth and remove it for the purpose of making bricks. *Held* per Strachey, C. J. and Banerji, J. that this was not dispossession. *Held* per Aikman, J. that that was dispossession *protanto*.<sup>4</sup>

Actual physical dispossession is not always necessary. Where a zamindar so interferes with the possession of a tenant, not personally occupying the land, as to induce the under tenants to pay rent to him (the zamindar), his interference amounts to dispossession.<sup>5</sup>

A tenant is ejected in accordance with the provisions of this Act, (1) by Court's order on an application *e. g.*, under section 54 or section 175 or in a suit under section 171 or 172, (2) by surrender, and (3) by abandonment.

Ejectment in execution of an *ex parte* decree for arrears of rent and an *ex parte* decree for ejectment is not ejectment otherwise than in accordance with the provisions of the law. The tenant's remedy is a proceeding to set aside the *ex parte* decree.<sup>6</sup>

The tenant objected to an application under section 61, Oudh Act, when the landlord proceeded to eject him under that section on account of an outstanding decree for arrears of rent, but did not appeal when the decision went against him. On his actual ejectment under the order passed he could not sue on the ground that his ejectment was not in accordance with the provisions of the Act.<sup>7</sup> The decision in the cases

<sup>1</sup> *Wazir Khan v. Debi Dayal*, XIII U. D. 183=14 L. R. Rev. 46.

<sup>2</sup> *Chet Ram v. Sahaba*, 13 A. L. J. 102=27 I. C. 533; *Kashi Sahu v. Lekhraj Singh*, XX U. D. 26=1938 R. D. 882.

<sup>3</sup> *Dukhi v. Sital*, 12 L. R. Rev. 395=XII U. D. 302=15 R. D. 730.

<sup>4</sup> *Suleman v. Baroda*, 19 A. W. N. 143.

<sup>5</sup> *Hoyamobatty v. Sreekishen*, 14 W. R. 58; *Radha Madhub v. Juggunnath*, 14 W. R. 189.

<sup>6</sup> *Noor Muhammad Khan v. Mehdi Ali Khan*, XII U. D. 11.

<sup>7</sup> *Kalka Singh v. Bakar Ali Khan*, III U. D. 162, not followed in *Tribhuvan Bahadur Singh v. Mathura Singh*, IV U. D. 366, and opposed to *Sheo Balak v. Raja of Amethi*, III U. D. 334.

cited in the footnote proceeded on whether the right of appeal conferred by section 120 of the Oudh Act applied to ejectment orders under section 61. The case in III U. D. 162 proceeded on the ground that an appeal lay, whereas the other cases proceeded on the ground that no appeal lay. Hence these cases are authority only for this much that if an appeal lay from an order of ejectment, omission to appeal will bar a suit for wrongful ejectment.

If on appeal the amount of arrears for which ejectment was ordered was reduced, ejectment for the amount originally decreed brought the case under the section.<sup>1</sup>

Where a tenant deposits the full amount of the arrears due, although the decree for arrears including interest and costs, owing to miscalculation, shows a larger amount, and is ejected for non-payment of the decretal amount, his ejectment is illegal.<sup>2</sup>

Where under the law (*e. g.* section 52 Oudh Rent Act) a tenant may avoid ejectment by paying the decretal amount only and not also the costs, but a compromise provides for payment of the costs also on a certain date, and the tenant is ejected for non-payment of the whole amount accordingly, his ejectment is not illegal and he cannot sue under section 183.<sup>3</sup> Loss of possession in any other way is ejectment otherwise than in accordance with the provisions of the Act, and gives the tenant a right to sue under section 183. For instance, a clause in a lease gives the lessor the right to re-enter on the land leased at any time he pleases or at stated seasons even against the wishes of the lessee. If the lessor, acting upon this clause, deprives the tenant of his land or any portion of it against or without consulting the wishes of the latter, a right of suit under section 183 accrues.<sup>4</sup> So if he re-enters on breach of a condition in the lease which empowers him to do so.<sup>5</sup> So where a *wajib-ul-arz* recorded that the landholder was in the habit of sowing indigo in his tenant's fields, that the rent of the fields for the time they were under indigo was to be deducted from the tenant's rent and that the fields were to be restored to the tenant after the indigo was cut, and the landholder sowed indigo in a tenant's field without consulting his wishes, the latter was held entitled to sue for recovery of possession.<sup>6</sup>

Where a tenant agrees to surrender but does not vacate his holding, there is no surrender. A landholder who acting upon the agreement

<sup>1</sup> *Ram Lotan v. Ajudhia Estate* B. R. 10 of 1914—I U. D. 78=1 O. L. J. 385=25 I. C. 660, (the ejectment took place while the appeal was pending.)

<sup>2</sup> *Maharaja v. Mahabir*, XX U. D. 18=1938 R. D. 778; *Pershad v. Ram Jas*, 7 R. D. 148.

<sup>3</sup> *Bullu Singh v. Uma Shankar*, XX U. D. 11=1938 R. D. 761.

<sup>4</sup> *Sokhai v. Ram Prasad*, 7 I. C. 486; *Chekhuri v. Ram Deo*, 1938 A. L. J. (B. R.) 61=XIX U. D. 198=1938 R. D. 604

<sup>5</sup> *Habibulla Shah v. Surji*, 15 O. C. 295=15 I. C. 857.

<sup>6</sup> *Ram Subhag v. Rukmani Sewak*, B. R. 12 of 1891,

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lets another tenant in exposes himself to a suit under the section.<sup>1</sup> Where the landholder has dispossessed the rightful tenant by putting another person in possession, a suit against the latter or both comes under this section.<sup>2</sup>

Where a landholder treating a holding, which had been mortgaged validly but over which the mortgagee had never obtained possession, as abandoned, and settles it with others, there is dispossession.<sup>3</sup>

Where there is a body of persons, constituting the tenant of a holding, which is recorded in the name of only some of them, say *A*, *B*, and *C*, and proceedings for arrears of rent under section 168 are taken against them only, and they and another person who was a co-tenant to the knowledge of the landholder, are ejected from the holding, this other tenant cannot be said to have been ejected otherwise than in accordance with law (more so, if the landholder did not know of his co-tenancy).<sup>4</sup>

If the number of co-tenants was large, and proceedings under section 168 were taken against some only without the knowledge of the others, the case might be different.<sup>5</sup>

Where *A* is admitted to a tenancy by *B*, the landholder, and is dispossessed by a stranger *C*, he may sue *C* for recovery of possession under section 180 within limitation. If *B* ejects *C* as trespasser, *A*'s tenancy still subsists and if *B* lets the holding to *D*, he dispossesses *A* who must sue *B* and *D* under this section within limitation from the date of *D*'s admission.<sup>6</sup>

*A* sued to eject *B* as a trespasser. *B*'s plea was occupation with consent. The *khatauni* showed *C* as tenant-in-chief and *B* as *kabiz*. The suit was decreed and it was held that if *C* had right as tenant he could sue under the section when *A* having ejected *B* too the land in his own cultivation or let it to another, and that since *B* had ignored *C* in his defence and took possession against him, nothing would be gained by making *C* a defendant as he could get no relief against *B* in the suit.<sup>7</sup>

A *dakhaldihani* of proprietary rights does not amount to dispossession of the expropriator from his expropriatory right in his *sir*, nor does subsequent proprietor's collection of rents from the expropriator's tenants in possession of the *sir* not by some overt act, but a background, amount to such dispossession,<sup>8</sup> *secus*, if it is done openly, and to the knowledge of the tenant.<sup>9</sup>

<sup>1</sup> *Shiva Tahal v. Jawahir Lal*, 31 I. C. 794=1 U. D. 51

<sup>2</sup> See section 185, *Moula v. Bahala*, 19 All. 34=16 A. W. N. 169; *Sokhai v. A. Prasad*, 7 I. C. 486; *Balbhudar v. Sumaru Rai*, 13 A. L. J. 295.

<sup>3</sup> *Raghu Nandan v. Gur Charan Prasad*, XIV U. D. 372=14 L. R. Rev. 702.

<sup>4</sup> *Krishna v. Suheb Singh*, XVII U. D. 296=1936 R. D. 393.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ganga Ram v. Hira Lal*, XVII U. D. 351=1936 R. D. 477.

<sup>7</sup> *Sheo Narain v. Sheo Ratan*, 1938 A. L. J. (B. R.) 18.

<sup>8</sup> *Balrajee v. Sarju Prasad*, 1 O. L. J. 759=27 I. C. 20=1 U. D. 7  
*Jhamola Kunwar v. Bhairon*, IV U. D. 226=6 R. D. 429.

<sup>9</sup> *Inayat-un-nissa v. Mithan Kumar*, IV U. D. 358=3 U. P. L. R. (B. R.) 68= R. D. 349

An ejectment may not be in accordance with the provisions of the Act though carried out under some of its provisions, *e. g.*, when ejectment is by notice to a person who is not liable to ejectment in that way.<sup>1</sup>

A tenant ejected without sufficient notice as required by the law may sue under the section.<sup>2</sup>

Possession of his holding given by a tenant under a usufructuary mortgage to the zamindar is not former's dispossession otherwise than in accordance with the provisions of the law.<sup>3</sup>

Ejectment of a subtenant is dispossession of the principal tenant and those deriving title from him. Ejecting the sub-tenant of a portion as a trespasser on the assumption that the holding had been surrendered is ejectment of the tenant otherwise than in accordance with the provisions of the Act.<sup>4</sup> A. an occupancy tenant, makes a usufructuary mortgage of his holding to B, who sublets it to C. On A's death his son D is entered as the tenant-in-chief and C as the subtenant. The zamindar sues to eject C, and on his plea that he is the tenant of B, the latter is made a defendant. The Court orders C's ejectment. This, according to Binerji, J.,<sup>5</sup> amounts to dispossession of the tenant-in-chief, D, and of his mortgagee B. If D does not sue within the period of limitation, his rights become extinct, and hence the rights of the mortgagee also. A suit by the mortgagee in the Civil Court is of no avail. Ejectment of a tenant puts an end to a mortgage executed by him so far as it affects the holding.<sup>6</sup>

If the admission by a mortgagor while in possession under his mortgage was not improper for a prudent owner, the mortgagor should not after redemption interfere between the tenant so admitted and his sub-tenant, as that would mean interfering with the tenant's right of possession.<sup>7</sup>

Ejectment as a subtenant by a Revenue Court of a person alleging himself to be an under-proprietor, did not debar the latter from suing in a Civil Court to establish his title.<sup>8</sup>

<sup>1</sup> *Khadim Husain v Jamil*, 13 O C 188=7 I C. 608; *Nanku Singh v Husam*, C. 83; *Purgash v. Adya Dut Uday Partab*, 12 O. C. 90=2 I C. 269; *Kharasuri Partab Narain Singh*, B R 4 of 1892; *Mahesh v. Rudra Partab Singh*, 1 U. D. 347; *Narain v. Partab Bahadur Singh*, V U. D. 364=4 L R Rev 123.

<sup>2</sup> *Mangru v. Muh. Ishaq*, III U. D. 467.

<sup>3</sup> *Abilakh v. Liladhar*, 45 I. C. 549 (A).

<sup>4</sup> *Sarup v. Parbhu Shankar*, XIX U. D. 15=1938 R. D. 11.

<sup>5</sup> *Pahalwan v. Satrupa*, 25 A. W. N. 178=2 A. L. J. 471.

<sup>6</sup> *Muhammad Ismail v Murtaza Husain*, II U. D. 745; *Shahzad Singh v. Baldeo Singh*, 1930 A. L. J. 599=1930 A. I. R. All. 352=126 I. C. 362=11 L. R. Rev. 52=XI U. D. (II. C) 130=14 R. D. 152

<sup>7</sup> *Jagra v Kulpi*, II U. D. 659.

<sup>8</sup> *Barsati v. Sarju Prasad*, 1939 A. I. R. Oudh 10=1938 O. W. N. 1074=1938 R. D. 855. This will not be true now.



An ejectment in due course of law or by order of Court is not within the section, although the order may be subsequently reversed,<sup>1</sup> unless the reversal is on the ground that the decree was without jurisdiction.<sup>2</sup> Should a Court eject for a cause not mentioned in the Tenancy Act, there may possibly be a cause for a suit under this section, but a plea of *res judicata* will have to be met. An ejectment under the decree of a Civil Court which had no jurisdiction under the Act to try a suit for ejectment is wrongful dispossession.<sup>3</sup> Where a minor is ejected because of the existence of an *ex parte* decree for rent against him, and the decree was passed in a suit in which a proper guardian *ad-item* had not been appointed to him and the one appointed was guilty of gross negligence, he was held to have a right of suit under the section.<sup>4</sup>

An ejectment in execution of a Civil Court decree, *e.g.*, a decree for redemption of a mortgage,<sup>5</sup> or a decree for specific performance,<sup>6</sup> is not an ejectment according to the provisions of the Act, (as required by the Act of 1926) and the person ejected may sue under section 44 of that Act. But now the language of the corresponding section 183 has been changed and the ejectment must have been otherwise than in accordance with the provisions of the law for the time being in force, (not necessarily this Act).

Where a zamindar purchased a fixed-rate holding from the female heir of the last male holder, a suit by the reversionary heirs of the latter for possession must be brought within three years of the zamindar's possession.<sup>7</sup>

Where a landholder takes illegal possession of a holding the tenant cannot sue under section 180 or in ejectment, but must sue under section 183. See note 9 to section 180 *ante*. and the next note.

Where the landlord takes possession of a holding surrendered by its subtenant, the tenant-in-chief must sue within limitation to recover.<sup>8</sup>

**10. By his landholder.**—For meaning of *landholder* see section 3 (11). The section does not apply where the wrongful ejectment is by a third party.<sup>9</sup> The zamindar is not the landholder of a subtenant or a tenant-in-chief in his zamindari. See note 5, at p. 573 *supra*.

<sup>1</sup> *Thakurdin v. Mannu Lal*, 19 All. 456=17 A. W. N. 101; *Dhondhu v. Lajh*, 1 Leg. Rem 183, but see *Kharasuri v. Partab Narayan Singh*, B. R. 4 of 1892.

<sup>2</sup> *Binda Prasad v. Jai Gopal*, 2 U. P. L. R. (B. R.) 109=6 Rev. and Cr. L. J. 36=IV U. D. 223=6 R. D. 424.

<sup>3</sup> *Kedar Nath v. Ram Hit*, 13 L. R. Rev. 53; *Thakur Prasad Singh v. Bhagwan Das*, XIII U. D. 49.

<sup>4</sup> *Darshan Lal v. Kunwar Bahadur Singh*, XI U. D. 208.

<sup>5</sup> *Baij Nath Pathak v. Gaya Din Singh*, 1934 A. L. J. 389=1933 A. I. R. All. 725=XV U. D. (H. C.) 125=15 L. R. Rev. 378=18 R. D. 302.

<sup>6</sup> *Chandika Prasad v. Bhairon Prasad*, I U. D. 34=30 I. C. 811.

<sup>7</sup> *Badri v. Sarju*, 36 All. 55=12 A. L. J. 29=22 I. C. 668.

<sup>8</sup> *Bashir Uddin Khan v. Duli Chand*, 14 L. R. Rev. 44=XIV U. D. 22.

<sup>9</sup> *Panchu v. Dep. Com.* 1929 A. I. R. Oudh 286=113 I. C. 734=12 R. D. 1927. But see *Govind Prasad v. Kandhai Singh*, 1935 A. I. R. All. 631, cited at page 573 *ante*.

Where a tenant is dispossessed by a person claiming to hold through a zamindar on the basis of a registered lease the remedy of the tenant is under section 183 and not section 180 for even if the lease as invalid it does not prevent the claim from being a *bona fide* one so as to being the case under section 183.<sup>1</sup>

Where a plot of land is part of plaintiff's holding but the defendant is in cultivating possession and the lambardar states or his receipts show that he collects the rent of it from the defendant, the plaintiff's remedy is a suit under the section and not under section 180.<sup>2</sup>

A *defacto* landholder, though there are other recorded proprietors in the khata khewat, is the landholder.<sup>3</sup>

The differentiation between sections 180 and 183 lies essentially in the fact that section 180 can only be resorted to by the person entitled to admit him to occupation against a person occupying land or retaining possession without his consent, and section 183 only by a *tenant* against the *landholder* or other persons mentioned in clauses (a) and (b) of section 183(1). A tenant is of course not the landholder except as regards his subtenants.

*Co-sharer.*—One of several co-sharers in a mahal is not the landholder, hence if he is dispossessed of land occupied by him as tenant by one of the other co-sharers, he has no right of suit under section 180 because being a tenant, he is not the person entitled to admit to occupation. His remedy is either a suit under section 183 when the *landholder*, *i.e.*, the entire body of co-sharers, has ejected him, or a civil suit. In *Narain v. Dalla*<sup>4</sup> a suit under section 79 of Act II of 1901 (present section 183) was held unmaintainable, but a suit under section 34 (present section 180) was held to lie. So far as the latter part is concerned, the ruling is of no value now, as section 180 gives a remedy only to the person entitled to admit, which a mere co-sharer is not. In a suit under section 183 by a co-sharer claiming as tenant, the fact of tenancy if challenged has to be proved.

If a co-sharer occupies as co-sharer more land in a mahal than he is entitled to, and the other co-sharers object and dispossess him, his only remedy is a civil suit.

Where a tenant is dispossessed by the entire body of co-sharers his remedy is a suit under section 183 and not under section 180 because he is not the person entitled to admit and section 183 specially applies, nor can proceedings under section 175 be taken by treating the landholder as subtenant.<sup>5</sup>

<sup>1</sup> *Jamiluddin v. Chhoto*, 1941 R. D. 317.

<sup>2</sup> *Dharan Singh v. Narain Singh*, XVIII U. D. 171=1937 R. D. 207; *Chekhuri v. Ram Deo*, 1938 A. L. J. (B. R.) 61=XIX U. D. 198.

<sup>3</sup> *Ram Kishun Singh v. Ram Das*, 14 L. R. Rev. 377=XIV U. D. 463.

<sup>4</sup> IV U. D. 384. A similar view was taken in *Rajjab Husain v. Alopi*, XX U. D. 197=1939 R. D. 202.

<sup>5</sup> *Risal Singh v. Matar Behari*, B. R. 6 of 1925=VI U. D. (B. R.) lxxxvii=6 L. R. Rev. 165=I R. and Cr. L. J. 228=1925 R. C. 295; *Salig Ram v. Ganga Prasad*, IX U. D. 147=9 L. R. Rev. 302=12 R. D. 719; *Abdul Khalil v. Abdul Majid*, XI U. D. 55; *Himmat Singh v. Chunni*, B. R. 6 of 1912, but see *Wasir Khan v. Bhiggan*, IV U. D. (H. C.) 821=6 R. D. 399; *Ana Aisa v. Jagrania*, XI U. D. 56; *Ram Kishan Singh v. Ram Das*, 14 L. R. Rev. 377=XIV U. D. 463.

A lambardar dispossessing a tenant brings himself within section 183 but not, if he did not act as lambardar but only as a co-sharer.<sup>1</sup>

One of two lambardars of a mahal wrongfully took possession of a tenant's holding and afterwards became the sole lambardar. A suit under section 99 of the Act of 1926 within 6 months of the sole lambardarship was in time, no possession before that counted.<sup>2</sup>

In an Oudh case it was held that a lessee from one of a body of co-sharers should be deemed to be tenant of the body and hence a suit by such lessee against the lessor and the other co-sharers was one under section 108 (10)<sup>3</sup> (present section 183).

Under Act II of 1901, section 79 of which (now section 183) was not so widely worded, and section 34 (now section 180) did not confine the remedy thereof to the landholder, it was held, and rightly, that in such a case the remedy of a dispossessed tenant against the co-sharer who dispossessed him was a civil suit with a limitation of 12 years under Art 142 or Art. 144, Limitation Act.<sup>4</sup>

In some of the cases, the suits of the dispossessed tenants were under section 34 (now section 180) read with section 58 of Act II of 1901 (now section 175) and were held to have been rightly brought,<sup>5</sup> though this would not be so now.

<sup>1</sup> *Surta v. Dalli*, 1927 A. I. R. All. 629=VIII U. D. (H. C.) 217=8 L. R. Rev. 237=1927 R. C. 257=104 I. C. 465=11 R. D. 421.

<sup>2</sup> *Debi Prasad v. Nazir Khan*, 14 L. R. Rev. 44=XIV U. D. 38

<sup>3</sup> *Ram Het v. Pirthi Nath*, 1935 A. I. R. Oudh 229=XVI U. D. 150=1935 O. W. N. 257=1935 R. D. 102

<sup>4</sup> *Rani v. Edal Singh*, 22 A. L. J. 113=VI U. D. (H. C.) 48=5 L. R. Rev. 37=10 R. and Cr. L. J. 91=1923 R. C. 573=78 I. C. 1041=8 R. D. 347; *Cheddu v. Achru Singh*, 46 All. 690=22 A. L. J. 570=1924 A. I. R. All. 572=VI U. D. (H. C.) 266=5 L. R. Rev. 365=1924 R. C. 331=84 I. C. 117=9 R. D. 325; *Adul Narain Singh v. Mahabir Prasad Singh*, 1930 A. L. J. 684=1930 A. I. R. All. 398=VIII U. D. (H. C.) 140; *Bhaira v. Abdul Wahab*, 1931 A. L. J. 1098=1932 A. I. R. All. 134=135 I. C. 555=13 L. R. Rev. 24; *Munir Muslim v. Sumbhoo*, XI U. D. (H. C.) 283=11 L. R. Rev. 250=14 R. D. 516; *Haswa v. Bishwa Nath*, XII U. D. 17=11 L. R. Rev. 368; *Bilaso v. Maula Dad*, IX U. D. (H. C.) 19=9 L. R. Rev. 357=1927 R. C. 454; *Surta v. Dalli*, VIII U. D. (H. C.) 217=8 L. R. Rev. 237; *Kali Charan v. Jagar Nath*, 1927 R. C. 198=10 R. D. 231=VII U. D. 146=8 L. R. Rev. 183; *Lagan Rai v. Raja Rai*, 1924 A. I. R. All. 507=VI U. D. (H. C.) 121=5 L. R. Rev. 176=1924 R. C. 209=79 I. C. 1025=9 R. D. 40; *Tirboni v. Jeut*, XI U. D. 154=12 L. R. Rev. 191; *Pattibind v. Sarju Singh*, X U. D. 170; *Asgar Husain v. Badlu*, III U. D. 514, must be taken to be bad law now

<sup>5</sup> *Adul Narain Singh v. Mahabir Prasad Singh*, 1930 A. L. J. 684=1930 A. I. R. All. 398=124 I. C. 21=14 R. D. 365; *Haswa v. Bishwa Nath*, XII U. D. 17; *Surta v. Dalli*, VIII U. D. (H. C.) 217; *Tirboni v. Jeut*, XI U. D. 154=11 L. R. Rev. 191=14 R. D. 40; *Pattibind v. Sarju*, X U. D. 170=13 R. D. 507.

In some cases which came up under the Act of 1926, these rulings were taken to be wrong.<sup>1</sup>

In other cases, these rulings under Act II of 1901 were held to be good law and it was held that section 44 (new s. 180) and not section 99 (new section 183) of the Act of 1926 provided the right remedy.<sup>2</sup>

In *Sukhdeo Rai v. Ram Dhari*,<sup>3</sup> the Junior Member dissenting from the High Court rulings and agreeing with *Ghurey Singh v. Lakhan Singh*,<sup>4</sup> *quod hoc*, held that a tenant dispossessed by one of several co-sharers may sue either under section 44 within 12 years or under section 99 of the Act of 1926 within six months.

The Junior Member observed that where such a tenant sued under section 99 under a genuine misapprehension of facts that he has been forcibly ejected by a man in his capacity as a proprietor, his suit should not fail because he might have more appropriately sued under section 44 of the Act of 1926.

In *Sukhrani v. Raghu Raj Singh*,<sup>5</sup> the lambardar let in *A* as tenant, and his only other co-sharer *M* dispossessed *A* in contravention of the Act. *A* sued *M* under section 99, and it was argued that the proper remedy was a suit under section 44. This seems to have been accepted by the Junior Member of the Board, who, however, held that the suit could not be defeated on that score, because the only difference between the two was that in one case the limitation was six months and in the other 12 years.

In later cases the Board ruled that section 44 of the Act of 1926 provided the proper remedy.<sup>6</sup>

It was again held that the remedy of a tenant ousted by all the co-sharers was under section 99 of the Act of 1926. If it happened that after the suit for his ejectment had been filed, the defendant won over the other co-sharers or the landlord, he could put up a plausible plea that he was holding on behalf of the landholder, the tenant's suit under section 44 (new s. 180) should not be dismissed as he ought to have resorted to

<sup>1</sup> *Subedar Singh v. Komul Singh*, 1929 A. I. R. All 656=10 L. R. Rev. 367=XI U. D. (H. C.) 49=119 I. C. 252=13 R. D. 676; *Ram Agyan Pandey v. Chatrughun Singh*, 1932 A. L. J. 864=1933 A. I. R. All. 44=13 L. R. Rev. 261=XIII U. D. (H. C.) 158; *Ram Chander Singh v. Niji*, 1937 A. L. J. 1249=1938 A. I. R. All 65=1938 R. D. 106.

<sup>2</sup> *Ghurey Singh v. Lakhan Singh*, X U. D. 223=10 L. R. Rev. 320=13 R. D. 852; *Bishu Nath Singh v. Dwarka*, 14 L. R. Rev. 218.

<sup>3</sup> XII U. D. 338=13 L. R. Rev. 189.

<sup>4</sup> X U. D. 223. Also in *Rambhishun Singh v. Ram Das*, 14 L. R. Rev. 377=XIV U. D. 463.

<sup>5</sup> XII U. D. 18=12 L. R. Rev. 309=15 R. D. 614. So in *Haswa v. Bishwa Nath*, XII U. D. 17.

<sup>6</sup> *Sheo Raj Singh v. Sukhu*, XV U. D. 212=15 L. R. Rev. 350; *Raghbir v. Hardowari*, XV U. D. 214; *Chhedi Singh v. Ram Jug*, XV U. D. 329; *Bishu Nath Singh v. Dwarka*, XIV U. D. 76=14 L. R. Rev. 218.

section 99 (now section 183.) If the defendant can establish that the tenant was dispossessed for more than the period of limitation, and that he himself has been recognised as tenant or *khudkasht* holder by the whole proprietary body, the suit under section 44 failed. But if less than the period of limitation had elapsed since his dispossession and it was not perfectly clear to all concerned that the person who had taken possession had taken it on behalf the whole coparcenary body, the suit under section 44 was not bad.<sup>1</sup>

Where one of several landholders ousted a tenant in pursuance of some supposed right the tenant could sue him for ejectment under section 180.<sup>2</sup>

A suit by a tenant against a person who said that he was not in possession by favour of the landholder but because he laid claim to the holding by virtue of a title superior to the recorded tenant was not under section 183 and is properly brought under section 180.<sup>3</sup>

A person who in collusion with the landholder had dispossessed a person must be proceeded against under section 183 and not under section 180 as the tenant is not the landholder of such person.<sup>4</sup>

Where a person claimed to hold possession of a plot in virtue of a family partition to the exclusion of the recorded tenant, and the claim was supported by the landlord, section 183 and not section 180 provided the proper remedy to the recorded tenant.<sup>5</sup>

On dispossession by his landholder, a tenant should sue under section 183 and it is doubtful whether he can resort to section 59 or section 61.<sup>6</sup>

He should not proceed under the section when the co-sharer who dispossessed him collected whole of his rent.<sup>7</sup>

**11. On any person claiming as landholder to have a right to eject him.**

A holding belonged to A and B. B left the village and A admitted C to the holding. B returned and dug up C's crops. C sued in a Civil Court for possession and damages. The Civil Court returned the plaint for presentation to the proper court. The suit is under section 183 (1) (a) as B claims to be the tenant-in-chief and therefore the landholder as in section 183 (1) (a).<sup>8</sup>

The words "claiming as landholder to have a right to eject him" do not mention the time of such claiming. The natural meaning would

<sup>1</sup> *Gulsari Lal v. Nathu Lal*, XVI U. D. 375.

<sup>2</sup> *Dular Singh v. Gajraj Singh*, XVIII U. D. 285=1937 R. D. 449.

<sup>3</sup> *Bhiki Khatik v. Hans Rani*, XIII U. D. 61.

<sup>4</sup> *Than Singh v. Chuttan Singh*, XII U. D. 83=15 R. D. 385.

<sup>5</sup> *Ram Lal v. Dharma*, XVII U. D. 19=1936 R. D. 33.

<sup>6</sup> *Wazir Khan v. Debi Dayal*, XIII U. D. 183=14 L. R. Rev. 46; relying on 13 L. R. Rev. 100

<sup>7</sup> *Ram Puari v. Bhagwan Prasad*, II U. D. 601.

<sup>8</sup> *Bhopal v. Khairati Rai*, XIV U. D. 211=14 L. R. Rev. 712.

be *claiming* at the time of dispossession or prevention from obtaining possession, and not later, *e. g.*, after the institution of the suit. Therefore, a *claiming* in the written statement of a defendant sued under the section may be left out of consideration altogether.

A common instance is where a tenant after granting a valid sublease surrenders the holding or suffers ejectment therefrom or dies without heirs entitled to succeed him or the tenancy comes to an end in some other way sanctioned by law, and the zamindar thereupon dispossesses the sub-tenant or prevents him from taking possession. Ordinarily, subtenants would have no remedy under section 183 against the zamindar, but in the case put, the latter would be acting under the claim of a right to eject.

A plot of land was *A's khudkasht* of more than 12 years' standing. In 1917 he mortgaged it with possession to *B*, who let it out to *C*. *A* redeemed the mortgage in 1926-27, and took actual cultivating possession of the plot. *C's* remedy against *A* is a suit under section 183, as redemption revived the rights of *A* to hold the plot as *khudkasht*, and not under section 180.<sup>1</sup>

12. Cl. (b). Any person admitted to the holding by such landholder etc.—The words *admitted to the holding* etc., displace “claiming through” and produce an important change inasmuch as admission by such landholder or person must be proved and a mere assertion of a claim through such landholder or person would not suffice. Section 183 does not apply to a tenant whose crops have been cut by some one who apparently disputes the right to the crops.<sup>2</sup> These words mean a person who has been put in by the landholder and who on the strength of such admission ousts the plaintiff, and cannot cover the case of a man who takes possession on some fancied right and whose right to possess is in fact repudiated by the landholder.<sup>3</sup> They include a person claiming by derivative title,<sup>4</sup> *e. g.*, as co-tenant,<sup>5</sup> or lessee from the landholder.<sup>6</sup> If the lease is not proved, the so-called lessee who dispossesses the tenant, was not admitted by the landholder, and a suit for his eviction and damages will lie in a Civil Court.<sup>7</sup> The person dispossessing may alone be sued; but if he claims by admission from the landholder, *e. g.*, as lessee, the lessor must also be joined as

<sup>1</sup> *Khedī Banwar v. Palsan Singh*, XI U. D. 145=14 R. D. 497.

<sup>2</sup> *Sheo Raj Singh v. Sukhu*, XV U. D. 212=15 L. R. Rev. 350.

<sup>3</sup> *Sheo Mun Miara v. Sital Dayal*, 14 L. R. Rev. 686=XIV U. D. 356

<sup>4</sup> *Ram Kuran Singh v. Ram Das Singh*, 54 All. 299 (F. B.)=1931 A. I. R. All. 635=15 R. D. 815.

<sup>5</sup> *Id.*

<sup>6</sup> This renders obsolete *Liladhar v. Bhajju*, 5 A. W. N. 332; *Man Rai v. Jai Ram*, 15 A. W. N. 77; *Chet Ram v. Sita Ram*, 46 All. 717=22 A. L. J. 713=1924 A. I. R. All. 678=VI U. D. (H. C.) 319=6 L. R. Rev. 366=1924 R. C. 531=11 R. and Cr. L. J. 38=82 I. C. 251=8 R. D. 367; *Thakur Dei v. Parbhu*, IV U. D. 636=3 L. R. Rev. 42.

<sup>7</sup> *Mahabir v. Khargi*, IX U. D. (H. C.) 68=9 L. R. Rev. 116=1927 R. C. 573=4 O. W. N. 973=105 I. C. 778.

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defendant.<sup>1</sup> Omission to implead the landholder in order to invoke the aid of the Civil Court will be ineffectual. Unless the person dispossessing was admitted by the landholder, section 183 does not bar a civil suit against him.<sup>2</sup> *A* alleging himself to be the tenant of a plot, sues *B* for possession of a land alleging it to be part of a grove on the plot leased to him but wrongly included in revenue papers in *B*'s tenancy land, but not under the same zamindars. The question as to which class of Courts has jurisdiction depends on who the lessors of *A* and *B* were. If *B*'s zamindars were some of the lessors of *A*, the suit falls under section 183 but if none of them joined in granting the lease to *A*, the suit is for the Civil Courts to decide.<sup>3</sup> Connivance is not authorisation: much less long possession even if there was authorisation; it was held that a civil suit against the person dispossessing was not barred.<sup>4</sup> This is hardly correct now. The landholder is a necessary party to a suit under this clause (*vide* section 185).

A trespasser dispossessed a tenant and the zamindar accepted rent from him. This does not imply his active consent to the dispossession of the tenant through the agency of the zamindar.<sup>5</sup> The ruling is of doubtful validity now.

*A* held certain land in 1333, but was ousted from it in 1334 by *B* who took the land from the landlord and paid rent to him. *A*'s remedy against *B* is a suit under section 183 and not under section 180.<sup>6</sup>

Where *A* claiming to be the tenant or a holding by admission by the landholder's *karinda* is found to be a trespasser and prevents a lessee from the landholder from getting possession, he may be sued by the lessee under section 183.<sup>7</sup>

In Oudh it was held that the enactment had no application where the contest was between two rival tenants claiming to cultivate the same land.<sup>8</sup>

<sup>1</sup> *Maula v. Bahala*, 19 All. 34, but see *Sukhdeo v. Sheo Bhajan*, 24 A. W. N. 172, *Dukhna Kunwar v. Unkar Pande*, 19 All. 452; *Balkaran Singh v. Narain Nath Singh*, 1V U. D. 88=1 L. R. Rev. 179; *Rampur v. Dubari*, XII U. D. 348.

<sup>2</sup> *Gaya Din v. Lodhi*, VIII U. D. (H. C.) 144.

<sup>3</sup> *Mata Prasad v. Tika Ram*, 1937 A. L. J. 137=1937 A. I. R. All. 261=XVIII U. D. (H. C.) 8=1937 R. D. 72.

<sup>4</sup> *Bibuna v. Betchu*, 7 L. R. Rev. 289=VII U. D. H. C. 279=1926 R. C. 364=1926 A. I. R. All. 531=24 A. L. J. 591=10 R. D. 326; *Ana Aisa v. Jagrania*, XI U. D. 56=14 R. D. 350.

<sup>5</sup> *Beni Madho v. Sambhu Nath*, 1929 A. I. R. All. 196=9 L. R. Rev. 180=IX U. D. (H. C.) 142=114 I. C. 908=1928 R. C. 64=12 R. D. 495.

<sup>6</sup> *Palakdhari v. Ramdu*, XIV U. D. 59=14 L. R. Rev. 237; *Patru v. Sheo Harakh*, XIV U. D. 164=14 L. R. Rev. 435.

<sup>7</sup> *Tilak Singh v. Kalka Prasad*, XV U. D. 449=16 L. R. Rev. 6.

<sup>8</sup> *Kalap Nath v. Mata Deen*, 18 O. C. 48=28 I. C. 859. This is modified now by the words of the heading.

A person claiming a holding as heir to a deceased tenant cannot be said to claim the holding through the landholder.<sup>1</sup>

Hence to evict a person who claims to be the daughter's son of a deceased co-tenant, the son's son of the other co-tenant may sue under section 180 and section 183 does not provide the proper remedy.<sup>2</sup>

**As tenant or otherwise.**—*e. g.*, as purchaser, donee, *thekadar*, mortgagee, etc., etc.

Where a *lambardar mutwali* admits a tenant, as he has the right to under section 245, and if other *mutwalis* and other persons claiming to hold from the latter dispossess him he may sue to recover possession under this section.<sup>3</sup>

**May sue.**—A suit may comprise the three items (i), (ii) and (iii) mentioned in sub-section (1) or may be for any of these items separately. Having sued for one of the items, will Order 2, Rule 2 of the Code of Civil Procedure bar the remedy as regards the others? It is certain that a suit for possession alone will bar a subsequent suit for compensation for wrongful dispossession, or for an improvement [sub-section (4).<sup>4</sup>]

If he recovers possession, he cannot get any compensation for improvements [sub-section (2)].

Where the three items are sued for but the Court allows only some of them and refuses the others, Order 2, Rule 2, will bar a subsequent suit.

Where a tenant after eviction under a decree for ejectment is reinstated on the success of his appeal from the decree, his proper remedy is a proceeding under section 144 Code of Civil Procedure and not a suit for compensation for wrongful ejectment.<sup>5</sup>

Where a tenant is wrongfully dispossessed and his crops are cut and removed, a suit for the value of the crops is for compensation under the section.<sup>6</sup>

Where a tenant obtains a decree for compensation for his illegal ejectment, the sum decreed is not liable to any reduction on account of rent for the period of his illegal ejectment.<sup>7</sup>

Where an act of cutting jungle wood by the superior proprietor is treated by the under-proprietor as an act of dispossession, a claim for damages for the cutting was held to lie under section 108(9c) of the Oudh Act<sup>8</sup> (now this section).

<sup>1</sup> *Ganga Charan v. Babu Lal*, XVI U. D. 188

<sup>2</sup> *Ganga Charan v. Babu Lal*, XVI U. D. 188.

<sup>3</sup> *Babu Ram v. Jaisna*, XII U. D. 224=15 R. D. 646.

<sup>4</sup> This was also the view in *Balgovind Lal v. Mahadeo Prasad*, B. R. 4 of 1898, see also *Ram Dularey v. Suchitla*, 1938 A. L. J. (B. R.) 48=XIX U. D. 193.

<sup>5</sup> *Narendra Bahadur Singh v. Govind Dayal*, XIII U. D. 145=13 L. R. Rev. 293.

<sup>6</sup> *Chet Ram v. Sahaba*, 13 A. L. J. 102=27 I. C. 532.

<sup>7</sup> *Rajjab v. Ghulam Husain Khan*, 1931 A. I. R. Oudh 12=XII U. D. (H. C.) 16=14 R. D. 660.

<sup>8</sup> *Raghu Raj Singh v. Wali Muhammad*, 1927 A. I. R. Oudh 188=2 Luck. 492=4 O. W. N. 421=11 R. D. 351=101 I. C. 503.



Where the zamindar cut *shisham* trees that grew on the tenant's plot but the tenant has neither been ejected nor kept out of possession the consequential relief of compensation for an improvement does not arise.<sup>1</sup>

A suit for compensation could be brought against the dispossessing landlord alone without joining the whole body of landlords.<sup>2</sup>

Compensation is estimated by the profits of the land, i. e., the price of the crops which the tenant could have raised minus the rent and cost of production.<sup>3</sup>

In a later case, the criterion was held to be the economic rent and not the value of the produce.<sup>4</sup>

Sub-section (4) renders obsolete *quod hoc Mata Din v Dwarka*,<sup>5</sup> which held that a suit may lie for compensation after the suit for possession was decreed and possession restored.

Compensation can be awarded even though the landholder dispossessed the tenant because he owed arrears of rent.<sup>6</sup>

**13. Proviso**—This proviso is very important. It enables the court to refuse restoration of possession in cases where the plaintiff would not be entitled to remain in possession after the expiry of the agricultural year in which the decree is given, e. g., cases of tenants from year to year or a term which would expire at the close of the agricultural year or has already expired at the date of the decree. The tenant gets his costs and compensation, if any, for wrongful dispossession, calculated to the end of his tenancy and for improvements. The object probably was to prevent multiplicity of litigation. While a landholder's remedy to eject by an application for ejectment for non-satisfaction of a decree for arrears is not barred the tenant is not entitled to be restored to possession.<sup>7</sup>

**14. Sub-section (4).**—Under the Oudh Act, section 108 (9) (c) provided an independent right of suit for compensation, so that a suit decreed under section 108 (10) for restoration of possession did not bar a subsequent suit for compensation for wrongful dispossession, but the starting point of limitation for a suit for compensation under section 108 (9) (c), was the date of ejectment and not the date of restoration of possession under a decree under section 108 (10).<sup>8</sup>

Section 108(9)(c) of the Oudh Act, was held to exclude from the jurisdiction of Civil Courts a suit brought by a tenant against his landlord either alone or against him and his agent.<sup>9</sup>

**15. Form of decree.**—In a suit for recovery of possession with compensation for dispossession and improvements, the court should, if the plaintiff succeeds in his claim for possession, award possession and compensation up to the date of restoration of possession, but

<sup>1</sup> *Balli Bhar v. Nakehked Mal*, 1940 R. D. 122.

<sup>2</sup> *Mata Din v. Dwarka*, 2 O. L. J. 735—I U. D. 294—31 I. C. 447.

<sup>3</sup> *Hanuman Singh v. Sheo Bandan Rai*, II U. D. 424.

<sup>4</sup> *Babu Ram v. Jaisna*, XIII U. D. 224.

<sup>5</sup> I U. D. 294.

<sup>6</sup> *Brij Lal v. Talewand Singh*, XVI U. D. 166.

<sup>7</sup> *Babu Lal v. Pal*, 1938 A. L. J. (B. R.) 1.

<sup>8</sup> *Ram Dularey v. Suchitla*, 1938 A. L. J. (B. R.) 48—XIX U. D. 143—1938 R. D. 375.

<sup>9</sup> *Bhaiya Shankar Bahadur v. Kurban Ali*, 8 O. C. 257.

no compensation for improvements, the reason being that the plaintiff will enjoy the benefit of those improvements after restoration whereas compensation therefor is granted only when he is to be deprived of those benefits in part or *in toto*. If he fails in his relief for possession on the ground that he would not have been entitled to remain in possession after the expiry of the agricultural year in which the decree is given, the decree should be for costs, and for such compensation on account of wrongful dispossession and improvements as are found due, the claim for compensation for wrongful dispossession being calculated for the whole period during which the tenant is entitled to remain in possession. In suits in which all the items are not comprised, the decree should be for so much of the relief claimed as the court finds established.

In a suit under section 127 (1) Oudh Act, a decree for ejectment could only be passed as a consequential relief on the plaintiff's application when a decree for arrears of rent had already been passed. Hence a suit under section 127(1) was of the description of a suit under section 108 (2) and even if the trial court passed a decree for ejectment only, an appeal lay under section 119 to the District Judge. This is no longer law.<sup>1</sup>

Where in a suit for arrears of rent under section 108 (2) Oudh Act, read with section 127 of the same, a decree for arrears of rent and also for ejectment was passed and the defendant appealed from this decree as to arrears of rent, no court-fee was held payable as regards the decree for ejectment, although if the appellant succeeded in his appeal, the decree for ejectment would have been set aside.<sup>2</sup>

The tenant is not entitled to the crops sown by a person put in by the landholder after his wrongful dispossession.<sup>3</sup>

16. **Suit.**—A suit under section 183(1) comes in Group B, No. 19 of the Fourth Schedule. It is cognisable by an Assistant Collector of the first class, and an appeal from his order lies to the Commissioner. The limitation is three years for a suit for recovery of possession or for compensation, or both, reckoned from the date of the wrongful dispossession. If the suit for possession is not brought within that period it is time-barred section 45 (f). The tenant may be minor or adult and possession may have been obtained by fair or foul means.<sup>4</sup>

For purposes of limitation, the dispossession of the tenant must be by some overt act of the zamindar or of some person claiming through

<sup>1</sup> *Bhagwan Datta v. Balbhaddar*, XVI U. D. 154 ; *Ram Bahadur Singh v. Dhevan Ray Singh*, X U. D (H. C.) 19.

<sup>2</sup> *Puttan v. Trust Mahmudabad Estate*, 1936 A. I R. Oudh 13=1935 O. W. N. 966=XVI U. D. 519.

<sup>3</sup> *Mir Singh v. Makhan*, 45 All 404=21 A. L. J. 300=1923 A. I R. All. 421=9 Rev. and Cr. L. J. 164=1923 R. C. 126=4 L. R. Rev. 134=V U. D. H. C. 144=74 I. C. 88=7 R. D. 38.

<sup>4</sup> *Shyam Saran v. Ram Khelawan*, XVIII U. D. 178=1937 R. D. 208.

him. The mere passing of a receipt for rent by such person to a trespasser after the institution of the tenant's suit is not such overt act.<sup>1</sup>

A suit for an injunction to restrain the landlord from offering obstruction to the appropriation of the produce of the trees planted by the plaintiff and for possession of specific timber standing on the land, is really under this section, for a Revenue Court can grant adequate relief within the meaning of section 259.<sup>2</sup>

See cases cited under note 2 *supra*.

A person in possession is not bound to sue for a declaration of his title. Hence such a suit does not fall under the section.<sup>3</sup>

In execution of a decree for redemption of a usufructuary mortgage of an occupancy holding, the tenant obtains formal possession but omits to take steps to get actual possession. His right becomes barred under this section after three years.<sup>4</sup>

Failure to sue to contest under section 56(d), of the Oudh Act a notice of ejectment did not debar the tenant from suing under the section if he thought his ejectment was illegal on any ground.<sup>5</sup>

A was admitted the tenant of a holding up to 1336, when he was alleged to have surrendered it. B, the zamindar, was alleged to have cultivated it in 1336. C alleged that he got this land in his lot on a partition in 1337. In 1336 B was entered as A's sub-tenant. It was held that assuming that B was cultivating it in 1336, he was doing so as sub-tenant of A as shown in the patwari's papers, and A must be taken to have been dispossessed when C obtained the land on partition in 1337 and as the suit by A against C was brought within limitation it was in time.<sup>6</sup>

Where the tenant-in-chief has been out of possession for more than three years and a person who had been entered as sub-tenant in his predecessor's time claiming to be holding through the landholder has been in possession, the tenant-in-chief's tenancy is gone and he cannot eject the others under section 175.

Where on the death of the person recorded as tenant of a holding in which another person was a co-tenant, the zamindar, ignoring the rights of the latter, grants a lease of it to a third person, and a criminal

<sup>1</sup> *Bhagirathi v. Atraji*, 1938 A. L. J. (B. R.) 77=XX U. D. 69.

<sup>2</sup> *Bagridi Mian v. Bhagwan Din*, 57 All. 922=1935 A. L. J. 520=1935 A. I. R. All. 608=1935 R. D. 220=XVI U. D. 385.

<sup>3</sup> *Kanta Shiromani Prasad Singh v. Narpatgir*, 7 O. L. J. 79=6 R. and Cr. L. J. 209=55 I. C. 534.

<sup>4</sup> *Bharon v. Abdul Wahid*, 1927 A. I. R. All. 551=VIII U. D. (H. C.) 103=1927 R. C. 88=8 L. R. Rev. 106=101 I. C. 591=11 R. D. 186.

<sup>5</sup> *Jasola v. Muhammad Ibrahim*, XIV U. D. 507=14 L. R. Rev. 854 relying on *Amar Singh v. Ram Narain Singh*, IV U. D. 403; *Jarband Singh v. Jaskar Singh*, II U. D. 506.

<sup>6</sup> *Subhan v. Cheddu Singh*, 12 L. R. Rev. 203=15 R. D. 540.

<sup>7</sup> *Bikram Bhai v. Mahesh Lal*, 12 L. R. Rev. 205.

complaint for trespass instituted by the co-tenant is dismissed on the finding that the latter was out of possession, limitation runs not from the date of the case, but from the date of the judgment of the Criminal Court, if the co-tenants had sown the crop the cutting of which by the lessee had led to the criminal complaint.<sup>1</sup>

The plaintiff has to prove his possession within three years.<sup>2</sup>

Where the trespasser on a tenant's holding is recognised as tenant by the landholder, the period of limitation for a suit by the tenant to eject him runs from the date of the recognition, as the suit would be under section 183.<sup>3</sup>

Where a suit to contest a notice of ejectment was dismissed for the tenant's failure to produce evidence, his suit for recovery of possession as on wrongful ejectment was held barred by *res judicata*,<sup>4</sup> but not so if the suit to contest the notice was by an under-proprietor, as section 108(10) of the Oudh Act expressly said so.<sup>5</sup>

Where the plaintiff was dispossessed under a decree of a civil court whose jurisdiction is excluded limitation runs from the date of such dispossession.<sup>6</sup>

Where in a proceeding for ejectment for non-payment of arrears of rent a fraud is committed on the tenant in that the notice of the proceeding is not served on him at all or there is some misrepresentation which makes him believe that the nature of the proceeding is different from what it really is, and the defendant having really no opportunity to appear and put his case before the court, an *ex parte* order is passed and he is ejected, he can sue in a revenue court under section 183, for his ejectment was otherwise than in accordance with the law, and not in a Civil Court for a declaration that the order of ejectment is illegal.<sup>7</sup>

Where occupancy rights accrue, and the land has to be demarcated, limitation does not begin to run until the land has been demarcated under section 36, Land Revenue Act.<sup>8</sup>

A tenant died heirless on 26th March, 1934. The next day A executed a *kabuliat* in respect of the land in favour of the zamindar to take effect from 1342 Fasli, i. e., 1st July, 1935. B claiming the holding took

<sup>1</sup> *Raja Tiwari v. Jhopari*, XVIII U. D. 159.

<sup>2</sup> *Sartaji v. Ish Narain*, 10 Rev. and Cr. L. J. 333=VI U. D. 220.

<sup>3</sup> *Bhagirathi v. Atiraji*, 1938 A. L. J. (B. R.) 77=XX U. D. 69=1938 R. D. 778; *Faiyaz Husain v. Haboo*, XVI U. D. 468=1935 R. D. 392; *Gulzari Lal v. Nathu Mal*, XVI U. D. 475=1935 R. D. 409.

<sup>4</sup> *Har Baksh Singh v. Lalla*, 3 O. L. J. 236=34 I. C. 640.

<sup>5</sup> *Khadim Husain v. Jamil*, 13 O. C. 188=7 I. C. 608; *Lalta Singh v. Humayun Qadar*, 2 O. L. J. 145=28 I. C. 303, but see *Mahesh v. Rudra Pratap Singh*, 2 O. L. J. 63.

<sup>6</sup> *Kedar Nath v. Ramhit*, 13 L. R. Rev. 53; *Thakur Prasad Singh v. Bhagwan Das*, XIII U. D. 49.

<sup>7</sup> *Ram Dihat Dube v. Gajraj*, XVI U. D. 204.

<sup>8</sup> *Satdeo v. Chandrapat*, XVII U. D. 38.

possession in the meantime, but was ejected on 25th June, 1935, by the zamindar who on 29th June, 1935 leased the land to C and placed him in possession. Limitation against A in suit under section 183 runs from the last mentioned date when he was wrongfully dispossessed.<sup>1</sup>

A suit under section 61 is a suit prosecuted in a revenue court which from defect of jurisdiction or other causes of a like nature is unable to entertain it, and hence a tenant suing subsequently under section 183 cannot exclude the period during which that suit was being prosecuted from the period of limitation.<sup>2</sup>

A mistake in the plaint as to the date of wrongful dispossession is not fatal to the claim.<sup>3</sup>

The court-fee payable on such a suit is assessed separately for the relief for possession for compensation according to the provisions of the Court-Fees Act.

17. **Jurisdiction** - Clauses (a) and (b) raise the question of jurisdiction. Before commencing a discussion it will be noted that they do not occur in section 59 where also most of the words in clauses (a) and (b) of this section do.

As sections 183 and 59 contain some similar expressions it will be better to consider them together, as regards the question of jurisdiction. Section 183 deals with the case where the defendant is (i) the landholder, (ii) a person admitted to or allowed to retain possession of the holding by such landholder, as tenant or otherwise, (iii) a person claiming as landholder to have a right to eject, or (iv) a person admitted to or allowed to retain possession of the holding by such person, as tenant or otherwise. Section 59 deals with cases where a defendant is primarily the landholder.

A person dispossessed or prevented from obtaining possession, in case (i), should sue the landholder under section 183, but he may also sue under section 59 for a declaration of his right of tenancy only. Since he is out of possession, limitation may elapse before he obtains a decree, in which event his decree may be useless for restoring him to possession.<sup>4</sup> Hence, his most appropriate remedy is a suit under section 183. It has been doubted whether he can resort to section 59 or section 61.<sup>5</sup>

When the right heir is prevented by the landholder from entering into possession he should sue under section 183 and not under section 59

<sup>1</sup> *Jahangira v. Muhammad Hasnain*, XVIII U. D. 319=1937 R. D. 507.

<sup>2</sup> *Matadin v. Mohan Pandey*, 9 L. R. Rev. 11=IX U. D. 8=1927 R. C. 443=12 R. D. 142

<sup>3</sup> *Din Dayal v. Ram Achal*, 12 L. R. Rev. 107.

<sup>4</sup> This happened in *Matadin v. Mohan Pandey*, IX U. D. 8=12 R. D. 142 See also *Jai Devi v. Bhagwan Sahai*, XI U. D. 230.

<sup>5</sup> *Wazir Khan v. Debi Dayal*, XIII U. D. 183=14 L. R. Rev. 46 relying on *Azimullah v. Dharamraj*, XIII U. D. 71=13 L. R. Rev. 100; *Bans Bahadur Singh v. Bhikhari Lal*, XVII U. D. 92=1936 R. D. 111,

but if he sued under section 59 within three years of the ancestor's death, the mistake may be condoned<sup>1</sup>

A person dispossessed or prevented from obtaining possession, in case (i), may under section 183 sue the person who has dispossessed him or prevents him from obtaining possession, but shall join the landholder as defendant (section 185) and under section 59 sue the landholder, joining as a party the person claiming to hold through the landholder. Since, as in the previous case, the question of limitation may crop up when he attempts to be restored to possession, the appropriate remedy in this case is a suit under section 183.

Cases have already been cited in the previous notes to illustrate case (ii). They are usually cases where the landholder has granted a lease of land which another person is entitled to possess or hold a tenant, to another, and the latter has dispossessed or prevented the tenant from obtaining possession.

Case (i) presents no difficulty. The plaint will usually show the relation between the parties and the fact of dispossession or being kept out of possession, which will bring the case at once under section 183. A novel element sought to be introduced has been to allege the landholder to be a subtenant and to proceed against him under section 175, as to which see note 23 to section 3, and cases cited under this section, or to allege that the landholder is a trespasser so as to justify proceedings under section 180, as to which see note 7 to section 180, or to sue in a civil court, which in view of the rulings is a futile task. The only case in which section 180 or a civil suit may be resorted to is where the defendant is not the landholder but one of a body which constitutes the landholder, see note 3 to section 180 and note 10 to this section.

In case (ii), i. e., of dispossession or being kept out of possession, by a person admitted to or allowed to retain possession of the holding by the landholder, as tenant or otherwise, much ingenuity has been exercised to keep case out of section 183 and to throw it under section 180 so as to give a choice of forum to the plaintiff, for a suit in a case that falls under section 180 has been allowed to be brought either in a revenue or a civil court.

As observed before, *prima facie*, the plaint and not the defence or the evidence determines the *forum*. As we shall presently see, some of the judges at one time took the view that defence statements somehow affected the question of jurisdiction; but it has been ruled otherwise now. Let us consider these cases.

A's suit against B for declaration of a share in a tenancy and for joint possession of a plot on the allegation that it formed part of an ancestral holding of the parties, that by a private partition a share in the plot had been allotted to A, and that B, by ejecting the subtenant through the revenue court, had taken possession over the entire plot, is under cl. (b).<sup>2</sup> The reason given is contained in the following words:—

<sup>1</sup> *Shoo Bux Singh v. Chhattar Singh*, XVII U. D. 170.

<sup>2</sup> *Ram Partab Singh v. Chotey Lal Singh*, 26 A. L. J. 431=1928 A. I. R. All. 269=IX U. D. (H. C.) 165=9 L. R. Rev. 154=1926 R. C. 29=199 I. C. 419=12 R. D. 136.

"It is clear that the plaintiff's case was that the defendant was keeping him out of possession of his share in the plot in dispute, and in so doing was setting up a right of tenancy in himself. There can be no room for doubt that by asserting sole title in himself as a tenant to the plot in dispute the defendant claimed through the landholder. In other words, the defendant maintained that he was the sole tenant of the plot in dispute on behalf of the landholder. In view of these allegations contained in the plaint, there is no escape from the position that the case came within the purview of section 99 (1) (b) (of the Act of 1926)". The learned judges also held that the relief as to declaration fell within section 121 (1) of the Act of 1926. They seem to rely upon the plaint itself, and to infer that the plaint had an allegation that the defendant claimed sole tenancy on behalf of the landholder. Since some tenancy in the holding in favour of the defendant was admitted in the plaint, one may say that the decision lays down that where the defendant is alleged in the plaint to be a tenant of the zamindar, the allegation is tantamount to an assertion that the defendant claims through the landholder.

A, a fixed-rate tenant, mortgaged  $\frac{3}{4}$ th of his holding to B and sold the remaining  $\frac{1}{4}$ th to C. In 1912, B sued A and C on the mortgage and obtained an *ex-parte* decree. Soon after, C ejected A from the  $\frac{3}{4}$ ths mortgaged to B, for failure to pay rent. B was not impleaded, nor knew anything about the suit. In 1915, A had the  $\frac{3}{4}$ ths sold under his mortgage decree and purchased it himself, and his name was entered in the revenue papers in 1917, in spite of objections by C, who was told to go to the civil court to get his rights, if any, declared. In 1920, 1921 and 1922 some suits by A or B for arrears of rent against subtenants were dismissed on the plea of payment in good faith to C. In 1927, the representatives of B sued in a civil court the representatives of C and the subtenants for a declaration of their rights, on allegations which meant that these three-fourths were separated from the fourth of C, and for an injunction restraining the representatives of C from obstructing collection of the subtenants' rents. They alleged the cause of action to have arisen on 4th April, 1923 when the last of the rent suits was dismissed, and in June 1925, when the representatives of C denied their title. On second appeal by the defendants from the decree granting the declaration asked for, the matter was referred to a Full Bench<sup>1</sup> on two points, *viz.* (a) whether section 99 of the Act of 1926 applies to a suit the cause of action for which arose prior to 7th September, 1926, and (b) the exact form of the issue which a court has to determine when considering the question of jurisdiction in the light of section 99.

As to (a), Sulaiman, Acting C. J. was of opinion that section 99 applied to a suit instituted after 7th September, 1926 even when dispossession arose before that date, because the section does not limit the time of dispossession and because the right to sue in a particular forum or within a fixed period of limitation was not a substantive right

<sup>1</sup> *Ram Karan Singh v. Ram Das Singh*, 54 All. 299 (F. B.) 1931 I. R. All. 635—1931 A. L. J. 1018—15 R. D. 815.

but a matter of procedure only, and therefore the revenue court provided the only forum for the suit, although under Act II of 1901, a civil court was the proper forum. He also held that claiming does not mean pleading in the written statement, as settled in *Ananti v. Chhannu*.<sup>1</sup> Mukerji, J. opined that a suit between rival tenants lay in a revenue court, that claiming did not mean pleading falsely or without any title in a written statement, that section 99 was not retrospectively applicable to a suit the cause of action for which arose prior to 7th September, 1926, as it did not lay down any rule of procedure but prescribed remedies for wrongs i. e., was part of the substantive law; and that therefore the civil court was the *proper forum* and the period of limitation was as before the Act, 12 years.

The view of Boys J. was that section 99 and section 121 dealt with substantive rights and not with procedure, and had nothing to do with the question of venue which is fixed by section 230 (present section 242) read with Schedule 4, or with the question of limitation, that section 99 did not apply to the suit; that the civil court was the proper forum and the period of limitation was that which existed before the Act.

King J. agreed with Mukerji J.; Bajpai J. was inclined to agree with the Acting Chief Justice but did not like to dissent from the order proposed by the three judges, viz., that the suit was properly brought in the civil court and the appeal should be dismissed.

The majority view affirms the previous views as regards question (a) propounded in *Jas Ram v. Pem Singh*.<sup>2</sup> See note 2 to section 2, at page 6 *supra*.

The next case is a three judge one.<sup>3</sup> There, on a plaint for a declaration of a right to a tenancy being returned by the revenue courts, a suit was filed in the civil court for a declaration that the plaintiff was co-tenant of a certain holding with defendants Nos. 1 to 3, and that in case of his being found to be out of possession he may be put in possession jointly with those defendants, and that defendant 4 had no concern with the holding. It was held that the plaint showed that the defendants being at least joint tenants claimed through the landholder and that the relief as to declaration came within section 121 (1) and to possession within section 99 (1) (b) of the Act of 1926 and therefore the revenue court was alone competent to entertain the suit.

It follows that a suit against an alleged co-tenant for recovery of possession because of dispossession by him and for compensation for wrongful dispossession lies in a revenue court.<sup>4</sup>

<sup>1</sup> 52 All. 501. (F. B.)—1930 A. I. R. All. 193—1930 A. L. J. 256—XI U. D. (H. C.) 201.

<sup>2</sup> 10 L. R. Rev. 230.

<sup>3</sup> *Sahdeo v. Budhai*, 51 All. 853—1929 A. L. J. 849—1929 A. I. R. All. 571—117 I. C. 337—13 R. D. 556.

<sup>4</sup> *Panchu v. Ram Newsa*, 1932 A. I. R. All. 244—XII U. D. 136—135 I. C. 847—15 R. D. 332.



In the next case,<sup>1</sup> the plaintiff claimed possession of a holding and compensation for wrongful dispossession from the defendant alleged to be a trespasser. The defendant pleaded that he was a tenant of half a share paying half rent to the zamindar, in other words, he kept the plaintiff out of possession of a half claiming as tenant of the landholder. Two learned judges gave it as their *ipsi dixit* that the provisions of section 99 (1) (b) of the Act of 1926 clearly covered the case, and that it was not necessary that the plaintiff should set out that the defendant was claiming through the landholder or claiming to be the sole tenant.

In the next case,<sup>2</sup> a Full Bench one, in which three judges took one view and two the other, the facts were similar to those in the last case, the only difference being that the plaintiff also claimed an injunction. The minority view was as in the last case, but the majority view was that it is the allegations in the plaintiff and not in the written statement which determine the jurisdiction and that therefore the suit lay in the civil court.

The majority judges held that claiming does not mean pleading in the written statement. The minority judges were of opinion that claiming means asserting a right in the written statement, whether well founded or baseless.

Taking the majority view in the Full Bench case to be correct it follows that where a plaintiff admits that defendants are joint tenants with the plaintiffs,<sup>3</sup> or that the defendant (claiming as a co-tenant or as a rival tenant) is in possession in collusion with the zamindar,<sup>4</sup> it admits that the defendant claims through the landholder, and the suit if for declaration of tenancy right should be filed under section 59 (1), and if for possession or restoration of possession under section 183.

Where plaintiff calling himself the tenant sues defendant as trespasser for possession and compensation and the defendant pleads tenancy, the suit was held to lie in a civil court.<sup>5</sup> In Oudh it was held that a suit for recovery of possession against a rival tenant and the landlord, the latter not having dispossessed him, lay in a civil court,<sup>6</sup> although he also pleads that his predecessor in interest took the land from the zamindar. The reason for the decision is that the plaintiff

<sup>1</sup> *Nandan Mallah v. Muhi. Ali*, 1929 A. L. J. 940=118 I. C. 588=XI U. D. (H. C.) 571=11 L. R. Rev. 14=13 R. D. 756.

<sup>2</sup> *Ananti v. Chhannu*, 52 All. 501=1930 A. L. J. 256=1930 A. I. R. All. 193=XI U. D. (H. C.) 201=11 L. R. Rev. 150=124 I. C. 540=14 R. D. 201.

<sup>3</sup> *Khelari v. Har Prasad*, 1930 A. L. J. 1015=1930 A. I. R. All. 434=XI U. D. (H. C.) 248=11 L. R. Rev. 202.

<sup>4</sup> *Ram Iqbal Rai v. Telesari Kuari*, 1930 A. I. R. All. 713 (F. B.)=XII U. D. (H. C.) 28=11 L. R. Rev. 349. See also *Balesar Pandey v. Ram Tahal*, 1930 A. I. R. All. 519=123 I. C. 681=XI U. D. (H. C.) 236=11 L. R. Rev. 183=14 R. D. 409.

<sup>5</sup> *Ram Rekha v. Inder*, 1935 A. L. J. 832=XVI U. D. 348.

<sup>6</sup> *Satrohun Singh v. Bharat Singh*, XVI U. D. 579, relying on *Midai v. Sajid Ali*, XI U. D. (H. C.) 67=6 O. W. N. 1094 and *Ambika Prasad v. Beni Madho*, XI U. D. (H. C.) 222=7 O. W. N. 343.

alleged the defendants to be rank trespassers and not in any way claiming through the zamindar.

Where persons other than the landholder wrongfully dispossess a tenant a civil suit lies though the landholder lent his weight and influence in the act.<sup>1</sup>

As to cases (iii) and (iv) mentioned above, see note 11, *supra*.

A suit under section 183 is within the exclusive cognisance of a court of revenue.<sup>2</sup> The jurisdiction of such court is not ousted by the tenant claiming mesne profits instead of compensation for the period of dispossession,<sup>3</sup> or a relief for a perpetual injunction.<sup>4</sup> This, only when the suit is strictly within section 183. For instance, a suit by a tenant against a person other than his landholder or person claiming to eject as landholder, who has dispossessed him,<sup>5</sup> But a suit against the landholder and the person put in possession by him lies in a revenue court,<sup>6</sup> unless from the circumstances of the case the revenue courts would not be able to help him.<sup>7</sup>

Section 9, Specific Relief Act, also provides a remedy for wrongful dispossession. Where the subject-matter is a holding, the suit should be under section 183<sup>8</sup> of this Act in a revenue Court, and not under section 9, Specific Relief Act, in a civil court.

Where a tenant is dispossessed in execution of a decree obtained by the landholder against a third person, his remedy under Order 21, Rule 100 Civil Procedure Code is not barred because he has a right of suit under section 183.

Section 60 (2) of the Oudh Act saved the right of a tenant to institute a suit against his landlord on account of illegal ejectment and to recover compensation therefor, although the court had ordered the ejectment of the tenant on the landlord's application for assistance to eject him after service of a notice on him under section 55 of that Act.<sup>9</sup> It was also held that a suit lay although no suit to contest a notice of

<sup>1</sup> *Durga Upadhaya v. Rajeshwari Prasad Singh*, XII U. D. 126.

<sup>2</sup> Section 242. *Amir Khan v. Jadunath*, 2 A. W. N. 57; *Shakur Khan v. Gumani*, 10 A. W. N. 177; *Ram Lal v. Chunni Lal*, 27 All. 372=24 A. W. N. 281=2 A. L. J. 69; *Beni Rai v. Parbati*, 13 A. W. N. 169; *Taraprit v. Ram Ratan*, 15 All. 387=13 A. W. N. 164; *Ganga Ram v. Beni Ram*, 7 All. 148=4 A. W. N. 312; *Fateh Muhammad v. Bhawani Bhik*, 14 O. C. 609=9 I. C. 951, not following Ssl. Ca. No. 243; *Jagut Rani v. Gokul Singh*, II U. D. 56.

<sup>3</sup> *Abdul Aziz v. Wali Khan*, 1 All. 338.

<sup>4</sup> *Ananti v. Chhannu*, 52 All. 501, (F. B.)=1930 A. I. R. All. 193=14 R. D. 201.

<sup>5</sup> *Man Rai v. Jai Ram*, 15 A. W. N. 77.

<sup>6</sup> *Maula v. Bahala*, 19 All. 34=19 A. W. N. 169, although the landholder does not resist the claim, *Aidal Singh v. Gyan Singh*, 1924 A. I. R. All. 615=VI U. D. (H. C.) 243=79 I. C. 318.

<sup>7</sup> *Dukhna Kunwar v. Unkar Pande*, 19 All. 452=17 A. W. N. 195.

<sup>8</sup> *Khurshid Husain v. Janki Prasad*, 53 All. 532.

<sup>9</sup> *Thakur Baksh Singh v. Abhaidat Singh*, 1935 A. I. R. Oudh 462=XVI U. D. 433=1935 R. D. 346=1935 O. W. N. 698=155 I. C. 582.

ejectment was filed.<sup>1</sup> Section 108 (9) (c) related to a suit for compensation for illegal ejectment, section 108 (10) concerned a suit for the recovery of land which had been treated by a landlord as abandoned, or from which an under-proprietor or tenant had been illegally ejected by the landlord or for possession by a person in whose favour an exproprietary tenancy had arisen under section 7A of that Act, and section 108 (10) (b) provided for a suit for occupancy of a holding claiming such occupancy as the heir of the deceased tenant of such holding.

A person who was not heir to the deceased tenant could not sue under the clause.<sup>2</sup> The plaintiff should have sued alleging his heirship, and if he did not prove it the suit failed.<sup>3</sup>

It was held that when the right of succession to a holding was disputed, section 108 (10) did not apply to a suit between rival claimants to it,<sup>4</sup> or when rival tenants claimed to cultivate the same land.<sup>5</sup>

A suit for recovery of land held by an occupancy tenant by a person alleging himself to be the heir against a person who was not the landlord was not beyond the jurisdiction of Civil Courts.<sup>6</sup>

But a suit against the landlord was within the exclusive jurisdiction of revenue courts.<sup>7</sup>

*Under-proprietor.*—The inclusion of under-proprietors in tenants (*vide* section 155) gives effect to rulings like the following :—*Ram Sewak v. Sukh Dei*.<sup>8</sup>

It was held at one time that an under-proprietor illegally ejected under a notice of ejectment issued to him could not sue in a Civil Court for declaration of his right.<sup>9</sup> After ejectment by notice he had to sue under section 108 (10) and if unsuccessful, then in a Civil Court,<sup>10</sup> but if he did not allege that he was in possession at the time of his ejectment, he could and had to sue in a Civil Court at once.<sup>11</sup> The Act of 1921 is

<sup>1</sup> *Jasoda v. Muhammad Ibrahim*, 14 L. R. Rev. 854.

<sup>2</sup> See *Ram Nath Singh v. Dhanraj*, IV U. D. 407.

<sup>3</sup> See *Raghubar Dayal v. Chandan*, 10 O. C. 23.

<sup>4</sup> *Kishan Kuer v. Bajrang*, 1 O. C. 172.

<sup>5</sup> *Kalap Nath v. Mata Din*, 18 O. C. 48—28 I. C. 259.

<sup>6</sup> *Mahadeo Singh v. Pudas Singh*, IX U. D. 83—9 L. R. Rev. 260 ; *Dalai Mal v. Ram Rati*, VIII U. D. (H. C.) 152—8 L. R. Rev. 154 ; *Gaya Din v. Lodhi*, VIII U. D. (H. C.) 144 ; *Maluka v. Pateshar Singh*, 1926 A. I R Oudh 371—7 L. R. Rev. 241 ; *Rajendra Bahadur Singh v. Brij Raj Baksh*, VIII U. D. (H. C.) 12—8 L. R. Rev. 17.

<sup>7</sup> *Rajendra Bahadur v. Pragraj Baksh*, 8 L. R. Rev. 17 ; *Algoo v. Narain*, 6 L. R. Rev. (Oudh) 87—VI U. D. (H. C.) 485—2 O. W. N. 435—1925 R. C. 343—8 I. C. 465.

<sup>8</sup> 1931 A. I. R. Oudh 244—XII U. D. (H. C.) 53.

<sup>9</sup> *Ram Piar v. Rameshar*, 19 O. C. 67—36 I. C. 623—2 R. and Cr. L. J. 279.

<sup>10</sup> *Khadim Husain v. Jamil*, 13 O. C. 188—7 I. C. 608 , *Nanku Singh v. Ghulam Husain*, 2 O. C. 83. The contrary view in *Sheo Paltan v. Rampal Singh*, 9 O. C. 37, was dissented from in 13 O. C. 188. See also *Paltu Singh v. Humayun Qadar*, 2 O. L. J. 145—28 I. C. 303 ; *Jagmohan Singh v. Dan Bahadur Pal*, 8 O. C. 174.

<sup>11</sup> *Ram Pargas v. Ajodhia Datt Udai Pratap Singh*, 12 O. C. 90.

said to have overridden 19 O. C. 67, so that a civil suit may be brought without recourse to the revenue court.

The proviso to section 108 (10) applied to under-proprietors who had been ejected under section 60, *i. e.*, by the court on a request for assistance by the landlord. The proviso to section 183 is more general in its terms.

A person claiming to succeed to an under-proprietor who made no claim on the death of the latter or of his widow, cannot sue under the section as his title is more than doubtful and it could not be said that he was ever in possession.<sup>1</sup>

*B* obtained a decree for under-proprietary rights in *S* and *K*, two hamlets of a village *X*, at a settlement. The taluqdar mortgaged the *taluka* to a Bank in 1881 and died in 1888, when *B* inherited the *taluka*. In 1899, all the rights of *B* in *S* and *K* were sold in execution of a decree against *B* and purchased by *A*, who obtained possession. In the same year, the Bank sued on its mortgage and in 1907 obtained a decree for sale of the rights of the deceased mortgagor in the estate at the date of the mortgage. *C* purchased *X* in execution of this decree and obtained possession, and dispossessed *A*. *A* sued to establish his under-proprietary rights in *S* and *K*. *Held*, inheritance by *B* did not merge his under-proprietary rights, as it would have been prejudicial to his interest, and that the suit was in reality not so much for the recovery of occupancy land from which an under-proprietor had been dispossessed as for establishment of the rights of *A* as under-proprietor and the suit was not barred by clause (10).<sup>2</sup>

It was held that the application of section 108 (10) was not confined to under-proprietors whose rights as such had been declared by, or admitted in a competent court.<sup>3</sup> But extended to under-proprietors whose rights as such are denied and who are alleged to be tenants.<sup>4</sup>

A plot proprietor, or holder of a *Hakkat Mutfaraga* is not an under-proprietor but a proprietor, and could not sue under this clause.<sup>5</sup>

When a grant of under-proprietary rights is to the *sajjada nashin* of a religious institution, a person not appointed as *sajjada nashin* could not sue as an under-proprietor under clause (10), or as a tenant<sup>6</sup>.

Where an under-proprietor was ejected from the occupancy of land under sections 54, 55 of the Oudh Act, which did not apply to under-proprietors, he could sue under clause (10) to recover possession, as the clause applied to ejectment under the provisions of the Act as well as ejectment otherwise than under its provisions.<sup>7</sup>

<sup>1</sup> *Rachpal Singh v. Bhagwant*, XII U. D. 273—15 R. D. 629.

<sup>2</sup> *Mata Prasad v. Razamand Singh*, 13 O. C. 35.

<sup>3</sup> *Khadim Husain v. Jamul*, 13 O. C. 188—7 I. C. 608; *Pargash v. Adiya Dat*, 12 O. C. 90—2 I. C. 269.

<sup>4</sup> *Lalia Singh v. Humayun Qadar*, 2 O. L. J. 145—28 I. C. 303—5 O. L. R. 189.

<sup>5</sup> *Baijoo Singh v. Narain Din*, B. R. 8 of 1914—I U. D. 70—1 O. L. J. 364—4 O. L. R. 298—25 I. C. 641.

<sup>6</sup> *Chauharja Baksh Singh v. Armani*, B. R. 16 of 1891.

<sup>7</sup> *Nanku Singh v. Ghulam Husain*, 2 O. C. 83.

Failure on the part of an under-proprietor to sue to contest a notice of ejectment under clause (8) was no bar to a suit under this clause.<sup>1</sup>

**184.** When a court of appeal or revision reverses a decree or order for the ejectment of a tenant, and the tenant is liable to ejectment in accordance with the provisions of this Act within the current agricultural year the decree or order of the court of appeal or revision shall not be for possession but, subject to the provisions of sections 73 and 74, for costs only.

1. The section reproduces section 100 of the Act of 1926, substituting "sections 73 and 74" for "section 116." Section 100 of the Act of 1926 corresponded to section 80 (1) of the Act of 1901.

Sections 73 and 74 of this Act refer to compensation for improvements as section 116 of the Act of 1926 did.

2. Where a tenant is ejected under a decree which is subsequently reversed on appeal or revision he should apply for restitution under section 144, Civil Procedure Code, and should not bring a separate suit.<sup>2</sup> But in the special circumstances mentioned in this section *viz.*, when the tenant is liable to ejectment within the current agricultural year, no decree or order for possession shall be passed. A similar direction to the trial court is contained in the proviso to sub-section (1) of section 183.

**185.** When a tenant sues under clause (a) of sub-section (1), of section 183 for possession, he may join as a defendant, in the suit, every person in possession claiming through the landholder or the person who has ejected him, as the case may be, and if he sues under clause (b) of sub-section (1) of that section he shall join the landholder or the person claiming as landholder to have the right to eject him, as the case may be, as a defendant in the suit.

The section reproduces in effect section 101 of the Act of 1926 which corresponded to section 81 of the Act of 1901. The words "or a rent free grantee" have been dropped. But section 198 has made this section applicable to rent-free granties.

Note the use of the word "may" in a suit under clause (a) and of "shall" in a suit under clause (b) of section 183 (1). See also note to section 183, pages 592 and 593.

**186.** The provisions of section 181 shall apply *mutatis mutandis* to the execution of decree for the re-instatement of a tenant in his holding.

<sup>1</sup> *Khadim Husain v. Jamil*, 13 O. C. 188=7 I. C. 608

<sup>2</sup> *Kashi Prasad v. Balbhaddar Singh*, 44 All. 284=20 A. L. J. 123=1921 A. I. R. All. 71=1922 R. C. 11=V U. D. (H. C.) 117=3 L. R. Rev. 97=8 R. and Cr. L. J. 89=65 I. C. 798=8 R. D. 533

The section reproduces in effect section 102 of the Act of 1926, which reproduced section 82 of the Act of 1901. It applies to under-proprietors, permanent tenure-holders and fixed-rate tenants. (*Vide* section 155).

See notes section 181 *ante*.

## CHAPTER IX

### GRANTS OF LAND HELD RENT-FREE OR AT A FAVOURABLE RATE OF RENT

**187.** In this Chapter "landlord" includes an under-proprietor with whom a sub-settlement has been made.  
Application of this chapter to under-proprietors.

The section corresponds to section 107-J of the Oudh Act. Comparing it with the definition of *landlord* in section 3(12) the necessity for the section is apparent. An under-proprietor is not a landlord under the definition, but if a sub-settlement has been made with him, he will be a landlord for the purposes of Chapter IX.

See notes on under-proprietor beginning at page 55 *supra*.

**188.** A rent-free grant means a grant of a right to hold land rent-free by a landlord with or without consideration not being a grant for the purpose of planting a grove :  
Meaning of rent-free grant.

Provided that in Agra if made after the seventh day of September, 1926, and in Oudh, if made after the commencement of this Act, such grant shall be made by registered instrument.

*Explanation I*—When a sale of land takes place, a reservation in favour of the vendor of a portion of the land sold, to be held rent-free by such vendor, is a rent-free grant.

*Explanation II*—A grant of land for the performance of a service, religious or secular, is a rent-free grant.

1. This section reproduces section 183 of the Agra Act of 1926 and is new so far as Oudh is concerned, and hence the words "and in Oudh, if made after the commencement of this Act" have been added to the Proviso.

The words "not being a grant for the purpose of planting a grove" are new.

A grant rent-free for the purpose of planting a grove is not a rent-free grant.

2. The grant must be by a landlord to hold land rent-free. It need not be in writing, unless made in Oudh, subsequent to the commencement of the Act and in Agra after 7th September, 1926. An assignee of rent from a tenant or the grantees of a right to collect rents from

tenants<sup>1</sup> is not a rent-free grantee and cannot be sued under this chapter. If he be declared a tenant the decision is not binding on a cultivator who was not a party and does not make him sub-tenant.<sup>2</sup>

**3. Grant of a right to hold land rent-free**—These words show that a grant need not be initially of *land* to be held rent-free. Land granted on rent followed by the grant of a right to hold it rent-free would constitute a rent-free grant.

There must however be a grant to hold land rent-free. This implies that the grantee's occupation of land is with the consent of the grantor, and that the latter expressly agreed to exempt it from payment of rent. This differentiates cases where a landlord puts a relation, dependant or other person, in possession of land, without saying anything as to payment or non-payment of rent or with an understanding express or tacit that rent will be charged, when the grantor chooses to charge it, in which cases section 94 provides the remedy open to him.

Where a grant is of the proprietary right itself, as in a *wakf*, it is not grant of a right to hold rent-free to which alone Chapter IX applies.

**4 Rent-free.**—A *muafi sarkari* or *lakhiraj* land or land granted by government free of revenue or exempted by government from payment of revenue is outside the section,<sup>3</sup> and the Chapter.<sup>4</sup> A grant by a zamindar revenue-free is really a rent-free grant. Where some rent or revenue, however low, is fixed, this chapter does not apply.<sup>5</sup> *Bahnour* land is not rent-free as its rent is included in that of the fields which actually give produce.<sup>6</sup>

**To hold rent-free.**—Implies some resemblance to the relation of landlord and tenant. Hence if there is or can be no such implication the grant will not be a rent-free grant, *e. g.*, a *guzara* is not a rent-free grant which is subject to the operation of this Chapter.<sup>7</sup>

An agreement between superior and inferior proprietors that the former will pay land revenue on behalf of the latter amounts to a rent-free grant. Revision or rescission of such an agreement must be by

<sup>1</sup> *Sripal Singh v. Bageswari*, VI U. D. 424=6 L. R. Rev. (Oudh) 43=1924 R. C. 412=8 R. D. 318.

<sup>2</sup> *Har Prasad v. Baldeo Prasad*, III U. D. 277=4 R. D. 98

<sup>3</sup> *Sheopalat v. Saleha*, I U. D. 146=33 I. C. 507; *Jangi v. Ram Buz*, 2 Rev. and Cr. L. J. 27=II U. D. 41=94 R. D. 511.

<sup>4</sup> *E. g.*, section 192, *Sri Ram Chandra Naik Kalya v. Satya Narain*, 1930 A. I. R. All. 353=124 I. C. 471=XI U. D. (H. C.) 246=11 L. R. Rev. 98=4 R. D. 355.

<sup>5</sup> *Bhagwant Singh v. Narain Singh*, 6 A. L. J. 733=3 I. C. 538; *Naubat Singh v. Narain Singh*, 4 A. L. J. 807=28 A. W. N. 27; *Kesho Das v. Hanuman*, 45 All. 640=21 A. L. J. 576=1924 A. I. R. All. 53=74 I. C. 924=V U. D. (H. C.) 175=4 L. R. Rev. 208=1923 R. C. 390=9 R. and Cr. L. J. 227=7 R. D. 89.

<sup>6</sup> *Ghaus Muhammad v. Sarju Prasad*, I U. D. 113.

<sup>7</sup> See *Bhagwan Singh v. Bisheshar Singh*, 20 O. C. 37=38 I. C. 677, but see *Jai Indar Bahadur Singh v. Bichan Singh*, VI U. D. (H. C.) 232=5 L. R. Rev. (Oudh) 129=83 I. C. 382, which held that *guzara* was a rent-free grant and was within the jurisdiction of revenue courts.

proceedings under this Chapter,<sup>1</sup> and not under Chapter XII for arrears of revenue.<sup>2</sup>

5. **Explanation I.**—On a sale, the owner may (a) sell the whole of his landed possession, excepting a defined area of *sir* or other land (keeping that for the support of himself and his family), nothing being said about payment of revenue because presumably the vendor holds himself responsible for it, in which case, he remains, as before, the owner of the reserved area, as unsold, and there can be no question of a grant of any kind to him of the land so reserved, *muafi* or otherwise; or (b) he may sell as in (a), the purchaser making himself expressly responsible for the revenue on the area reserved, or (c) he may sell the entirety of his interest, the purchaser granting him a certain area of *sir* or other land to hold rent-free for support.

There is a difference between cases (b) and (c). In (b) the reserved area was never sold, but as part of the consideration for the sale the purchaser made himself responsible for the payment of land revenue. Such a reservation is not a grant rent-free<sup>3</sup> or otherwise, as the vendor never parted with the reserved area, for the word grant connotes that the grantee has received something not belonging to him.<sup>4</sup> The explanation, however, seems to put both these classes under the category of grants to hold rent-free.

The Board of Revenue has in some cases regarded case (b) as that of a rent-free grant falling under clause (c) of section 192 (2)<sup>5</sup> and free from assessment of revenue forever at the instance of the purchaser or his heirs and assignees, or under clause (a) or (b) of section 192 (1) liable to assessment to revenue at the instance of the zamindar.<sup>6</sup>

<sup>1</sup> *Pyare Lal v. Amna Khatun*, XVII U. D. 290—1936 R. D. 404, relying on *Naurangi Lal v. Khoji Lal*, B. R. 18 of 1925.

<sup>2</sup> *Jugal Kishore v. Mathura Prasad*, XVII U. D. 293—1936 R. D. 401.

<sup>3</sup> *Sri Thakurji Maharaj v. Lachmi Narain*, 11 A. L. J. 212—19 I. C. 67, but see *Uma Nath Baksh Singh v. Janki Baksh Singh*, VI U. D. 367—6 L. R. Rev. (Oudh) 49—1925 R. C. 261—29 O. C. 10—2 O. W. N. 199, where the learned Judicial Commissioner decided that the case fell under the first or second paragraph of section 107-H, Oudh Rent Act, without considering whether the plot had been sold at all.

<sup>4</sup> This was also the view in *Dirgaj Singh v. Muzaffur Husain*, II U. D. 148; *Baldeo Singh v. Jawahir Kunwar*, II U. D. 143, but see *Gobind Prasad v. Suraj Baksh*, B. R. 4 of 1903.

<sup>5</sup> *Dwarka Prasad v. Phul Kumbar*, I U. D. 38—32 I. C. 101; *Har Priya Saran v. Ram Nath*, VI U. D. 87—5 L. R. Rev. 118—10 R. and Cr. L. J. 153—1924 R. C. 123—9 R. D. 506; *Abdul Majid v. Ajodhya Kalwar*, IV U. D. 571—2 L. R. Rev. 129—7 R. and Cr. L. J. 229—4 U. P. L. R. (B. R.) 21—5 R. D. 331.

<sup>6</sup> *Govind Prasad v. Suraj Baksh*, B. R. 4 of 1903; *Kalka Singh v. Dwarka Prasad*, I U. D. 58—32 I. C. 41,



The Government is not bound by the contract as to the payment of revenue.<sup>1</sup> The purchaser is bound during his life, but cannot pass the liability to his heirs and assignees.<sup>2</sup>

Case (c), i. e., where the entire interest is sold, but the vendor is allowed to retain in perpetuity some *sir* or other land for his maintenance, free of rent, ownership in the reserved area has passed to the vendee, but the right of occupation is forever with the vendor. As the land reserved is often *sir*, this means in case of such reservations after 22nd December 1873, (where under Act 18 of 1873, exproprietary rights arose for the first time) that the vendee remitted the rent payable by the expropriator and agreed to let him hold the land rent-free. The land will be presumed to be held under a rent-free grant and liable to the operation of this Chapter. If land reserved was other than *sir*, or the reservation of *sir* was before 22nd December, 1873, the holder will be deemed to be a rent-free grantee and subject to this Chapter.

All these cases come under Explanation I to this section. That Explanation refers to reservation, rent and not revenue-free, and to reservation of a portion of the land sold. Where a grant, revenue-free is made by Government it is not a rent-free grant as shown above. Where a zamindar makes a grant rent-free or revenue-free as *nankar* to some one, it is really a rent-free grant.<sup>3</sup>

It amounts to a grant in perpetuity by which the grantor or the original purchaser may be estopped, but not any subsequent landlord, whether transferee or successor.<sup>4</sup>

The vendor relinquished his *sir* plots to the vendee, and the latter executed a deed giving the vendor the *sir* plots in perpetuity but without any right of transfer except to the vendor at a named price. The vendor is a rent-free grantee who under the terms of the deed cannot validly transfer them by mortgage to a stranger and such plots cannot be sold in execution of a decree on a mortgage of them executed by the vendor.<sup>5</sup>

<sup>1</sup> *Durguj Singh v. Musaffar Husain*, II U. D. 148; *Baldeo Singh v. Jawahir Kunwar*, II U. D. 143; *Govind Prasad v. Suraj Baksh*, B. R. 4 of 1903; *Mohan Lal v. Har Prasad*, II U. D. 187.

<sup>2</sup> *Sri Thakurji Maharaj v. Lachmi Narain*, 11 A. L. J. 212=19 I. C. 67; *Ram Gobind v. Sri Thakurji Maharaj*, 11 A. L. J. 231=19 I. C. 126; *Ali Husain v. Hakim ullah*, 38 All. 230=14 A. L. J. 256=2 R. and Cr. L. J. 77; *Pachen Singh v. Jangjit Singh*, 39 All. 166=15 A. L. J. 17=3 R. and Cr. L. J. 40=38 I. C. 647, see also *Ram Adhin v. Sheo Ratan Singh*, 6 O. C. 184. See *Naubat Singh v. Narain Singh*, 4 A. L. J. 807; *Bhagwant Singh v. Narain Singh*, 6 A. L. J. 733; *Abdul Majid v. Ajodhya Kalwar*, IV U. D. 571=2 L. R. Rev. 129=7 R. and Cr. L. J. 229=4 U. P. L. R. (B. R.) 21; *Sahib Ali v. Sulha Ali*, 21 All. 12=18 A. W. N. 149.

<sup>3</sup> *Ganesh v. Ganesh*, B. R. 17 of 1884; *Rameshar Dat v. Court of Wards*, II U. D. 514.

<sup>4</sup> *Raj Kumar Lal v. Ram Naresh*, XIV U. D. 366=14 L. R. Rev. 696.

<sup>5</sup> *Har Dayal Singh v. Lal Nauratan Singh*, 1934 A. I. R. All. 358=14 L. R. Rev. 832=XIV U. D. (H. C.) 130=17 B. D. 998,

In this connection it would be profitable to enquire into what are called *nankar* lands.

The word *nankar* is often used loosely. Its literal meaning is *fc. 'read i. e., maintenance or support*. Its exact signification depends upon the circumstances or conditions under which it came into being. It arises generally speaking in one of two ways, *viz.*, (i) on sale of his interest by a zamindar, with a reservation of an area of *sir* or other land, for his support, or (ii) by grant by (a) the government or a ruling chief, to a subject, or (b) a zamindar to a relation, friend or dependant. The reservation or grant is often called a *nankar* in common parlance, but its incidents are not identical in all cases.

6. **Explanation II.**—This was also the law under Act II of 1901, but not under the earlier Acts. Under Act II of 1901, it was held that a gift of land in consideration of the donee having taught the *Koran* to the son of the donor, made the donee a proprietor and not a rent-free grantee,<sup>1</sup> the grant being deemed to be one of proprietary rights, and not for services. A grant in lieu of wages was under the Act of 1881 held not to be a rent-free grant.<sup>2</sup>

7. The provisions of this chapter should not be applied by a revenue court where the defendant though entered as a rent-free grantee in revenue papers makes out a strong *prima facie* case of adverse proprietary possession until his title has been set aside by a Civil Court,<sup>3</sup> or who has proved his prescriptive title in a Civil Court,<sup>4</sup> or to a donee of proprietary rights for a consideration.<sup>5</sup>

8. **History of rent-free grants**—In the leading case of *Sonatan v. Abdul Farar*<sup>6</sup> the history of such grants is touched upon by the judges. They may be divided into three classes, *viz.*, (1) those made before the grant of the Dewany to the East India Company in 1765, (2) those made after that date and before the 1st of December 1790, and (3) those made subsequent to the last mentioned date. We find in Colebrooke's Digest of Regulations, Vol. 3, at p. 229, the following rules laid down for deciding as to the validity of titles alleged to be under the first class :—(i) that all grants anterior to 1765 and of which possession of one year had been held before that should be considered valid; and (ii) that possession of that nature, even without a grant, was valid. As regards the second class, *i. e.*, those between 1765 and 1790, a rule was framed in 1772 by which zamindars and farmers of revenue were bound, by an express clause inserted in their leases, not to confer any grants of land without the knowledge and consent of government. This

<sup>1</sup> *Abdul Ali v. Hari Kishun Das*, 11 U. D. 38.

<sup>2</sup> *Nathwa v. Bhura*, B. R. 11 of 1883; *Waris Ali v. Muhammad Ismail*, 8 All. 552—6 A. W. N. 221.

<sup>3</sup> *Budhu Lal v. Ram Sarup*, 33 I. C. 250—2 O. L. J. 752—2 Rev. and Cr. L. J. 8—11 U. D. 647.

<sup>4</sup> *Mata Din v. Kedar Nath*, B. R. 16 of 1910.

<sup>5</sup> *Abdul Ali v. Hari Kishan Das*, 2 Rev. and Cr. L. J. 22—11 U. D. 38.

<sup>6</sup> 2 W. R. 91 (F. B.)

stipulation was violated with impunity, and, in 1782, an office called the Baze Zamin Daftar, was established for the registration of such grants. All grants not so registered or sanctioned by Government were invalid. The duty of the officer was to register free grants sanctioned by the Government and to report on the validity of the titles of existing grants to the Committee of Revenue with whom the ultimate decision rested. In 1786 the office was abolished and collectors were invested with the duty of investigating and reporting on *lakhiraj* tenures. At the time of the decennial settlement of 1790, the rules of 1782 were confirmed, and it was declared (1) that the revenue which may be assessed on all rent-free grants, consisting of one or more villages, and of portions of villages, (provided the sum assessed on such portion exceeded one hundred rupees per annum), alienated prior to the 1st of December, 1790, and which may be resumed in conformity thereto, shall belong to Government; (2) that the revenue so assessed, where its amount did not exceed Rs. 100, shall belong to the zamindar or farmer of the village; and (3) that any purchaser of the village subsequent to the December, 1790, at a public or private sale, shall be entitled to all property in the soil, and the Government share of the produce (whether more or less than Rs. 100) of all portions of such village or villages that may have been alienated since that date and prior to his purchase. This rule remained in force until the 1st of May, 1793 when Reg. XIX of 1793 was passed, which enacted: (1) that the revenue of any land not exceeding 100 bighas alienated by one grant prior to 1st December 1790 should, on resumption, belong to the zamindar; (2) that revenue of land so alienated and resumed, exceeding bighas 100, should belong to Government (sections 6 and 7); and (3), all grants made by any authority other than that of the Governor-General since the 1st of December, 1790, whether above or under 100 bighas, shall be null and void, that no length of possession can give validity to such grants either with regard to property in the soil or the rent of it; and the zamindars are authorised and required to collect the rents for such lands at the rate of the pargana and to dispossess the grantee and re-annex it to the estate to which it belonged without any application to a Court of Judicature (section 10) Sections 11 and 12 empowered zamindars and Government to sue in the Civil Courts to resume the land to the revenue of which they were declared entitled by sections 6 and 7. Owing to various causes, the summary powers conferred on zamindars were rarely exercised. Regulation II of 1819 was passed to secure the rights of Government and zamindars conferred by the rules and regulations mentioned above. By section 30 of that enactment, suits by zamindars to assess land held free of assessment were to be referred to the Collector.

The Full Bench, in the case already referred to, came to the conclusion that this section referred to revenue or rent of *lakhiraj* land existing prior to 1790. The point was made clear by section 8 of Reg. IV of 1825, which enacted that nothing in Regulation II of 1819 or in any other Regulation in force "shall affect or be

considered to affect" section 10 of Reg. XIX of 1793. Act X of 1859 (section 28) repealed this section and opened the doors of the Collector's Court for the decision of all applications (treated as suits) for resumption or assessment of revenue or rent on rent-free grants, *i. e.*, grants made subsequent to the 1st of December 1790. Grants prior to that date were left untouched. It provided a limitation of 12 years for such suits to be reckoned from the date when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him first accrued. Act XIV of 1859 which was passed five days later, gave, by section 1, cl 14, a period of twelve years for suits for the resumption of any *lakhiraj* or rent-free land, and provided that, in estates permanently settled, no such suit, although brought within 12 years, shall be maintained if it was shown that the land was held rent-free from the period of the permanent settlement, the burden of proving which lay on the grantee;<sup>1</sup> in other words, the Act and presumably Act X applied to grants made after the permanent settlement.<sup>2</sup> The period began to run as under section 28 of Act X, which was construed to mean the date when the grantee began to hold the land in dispute rent-free.<sup>3</sup> Act XIV was repealed by Act IX of 1871, art. 130 of which adopted the provisions of clause 14, section 1, of the repealed Act as to resumption and assessment, but made the period of 12 years run from the date when the right to resume or assess first accrued. Act XV of 1877, art. 130, which superseded, and re-enacted this article, omitted the proviso as to land held rent-free from the time of the permanent settlement. It was held that when a decree declared a land liable to assessment, the right to assess accrued then and a suit for that purpose brought more than 12 years from that time was barred.<sup>4</sup> Act IX of 1908, art. 130 repeals art. 130 of Act XV.

As regards Agra Reg. XIX of 1793 was extended in respect of grants made subsequent to the respective dates of the Regulations to be presently mentioned :—(a) to the Province of Benares by Reg. XLI of 1795, section 6, (b) to the ceded districts by Reg. XXX of 1803 section 21 and (c) to the conquered districts by Reg. VIII of 1805, section 24—*i. e.*, to the whole of the North-Western Provinces. Section 28 of Act X of 1859 repealed all these sections and enacted the provisions already mentioned. Art. 130 of the Limitation Act has practically been repealed by the Tenancy Act.

These enactments did not touch grants made before the 1st of December 1790;<sup>5</sup> or the date of the subsequent Regulations applicable

<sup>1</sup> *Ram Charan v. Hates Mahton*, 13 W. R. 247.

<sup>2</sup> *Kristo Mohan v. Joy Kishen*, 3 W. R. 33

<sup>3</sup> *Furlong v. Kusroo*, 6 W. R. 531; *Ganga Ram v. Huree Nath*, 15 W. R. 846; *Sitarama v. Jogunti*, 3 Mad. H. C. 67.

<sup>4</sup> *Nil Komul v. Bir Chunder*, 16 Cal. 450, note, *Bir Chunder v. Raja Mohun*, 16 Cal. 449.

<sup>5</sup> *Sagoremonee v. Bipradas*, 1 W. R. 249; *Heera Monsee v. Koonj Bihari*, B. L. R. Sup. Vol. Ap. 8—2 W. R. 107; *Harihar v. Mudhab Chunder*, 14 Moo. I. A. 152—8 B. L. R. 566—20 W. R. 459; *Sonatum v. Abdul Furar*, B. L. R. Sup. Vol. 109—2 W. R. 91.

to the case. They are governed by Reg II of 1819.<sup>1</sup> A rent-free grantee if he alleged his grant to have been prior to 1st December 1790 had to prove it;<sup>2</sup> but if the grant was admittedly subsequent to that date, the zamindar could not succeed until he showed in the first instance that the land claimed was part of his zamindari and at one time was *mal* land, and the grantee was not put to proof of his title until the zamindar has established the fact of the land having once, at some time subsequent to December 1790, been rent-paying land.<sup>3</sup> A grantee when setting up a grant before 1790, could content himself by proving that at the time of the institution of the suit the zamindar was debarred by lapse of time from instituting a suit for resumption or assessment<sup>4</sup> or that his possession dated back to the 1st of December, 1790.<sup>5</sup>

Act XVIII of 1873, section 30, recited section 10 of Regulation XIX of 1793 and the Regulations extending it to Agra and enacted fresh provisions for resumption of assessment. This section was re-enacted as section 30 of the Act of 1881 and was then superseded by Chapter X of the Tenancy Act of 1901, and later by Chapter XI of the Act of 1926.

In Oudh, no provision for resumption was made in the Rent Act of 1868. The Land Revenue Act, 1876, by sections 52 to 55 provided for resumption of *muafi*, but not for assessment of rent.

It was held that the provisions of the Resumption Chapter (VII A) of the Act of 1886 applied to land held rent-free from before the annexation of Oudh in 1856 in consideration of the loss of rights previously vested in the holder, and no explicit grant in writing or otherwise was necessary.<sup>6</sup>

9. The word *landlord*, read with section 3 (12), perhaps includes the perpetual lessee of a village or mahal, although he has to pay rent to the proprietor and there is a right of re-entry on default in favour of the latter,<sup>7</sup> or the mortgagee in possession,<sup>8</sup> but the point is not clear. It does not include a fixed-rate tenant who has gifted his land rent-free to a Maha Brahman and wishes to resume it.<sup>9</sup> Does it include a permanent tenure-holder? The use of the word landlord throws doubts

<sup>1</sup> *Harihar v. Madhab Chunder*, 8 B. L. R. 556—20 W. R. 459; *Arfunissa v. Pearay Mohan*, 1 Cal. 378—25 W. R. 209; *Bacharam v. Pearay Mohan*, 9 Cal. 813.

<sup>2</sup> *Dammar Singh v. Khushal*, B. R. 15 of 1893—13 A. W. N. 193.

<sup>3</sup> *Mahomed Akhir v. Reilly*, 24 W. R. 447; *Koylash Bushinee v. Goculmonee*, 8 Cal. 230—10 C. L. R. 41.

<sup>4</sup> *Abhoy Churn v. Kally Prasad*, 5 Cal. 949—6 C. L. R. 260.

<sup>5</sup> *Koylash Bushinee v. Gecoolmani*, 8 Cal. 230—10 C. L. R. 41.

<sup>6</sup> *Saifuran v. Najaf Ali*, II U. D. 219.

<sup>7</sup> *Mata Badal v. Ganesh Narain*, 40 All. 656—16 A. L. J. 619—4 Rev. and Cr. L. J. 182—46 I. C. 920.

<sup>8</sup> *Narpat Singh v. Lakha Singh*, II U. D. 492.

<sup>9</sup> *Boji Ram v. Bhulan*, IV U. D. 86—1 L. R. Rev. 77—6 R. and Cr. L. J. 122—3 U. P. L. R. (B. R.) 157—6 R. D. 198.

on 40 All. 656 and II U. D. 492, and on rulings<sup>1</sup> which held that a purchaser for valuable consideration from a rent-free grantee, the proprietary rights being in the original proprietor, was himself a rent-free grantee.

*Proprietor*, under section 150 of the Act of 1901, meant the proprietor paying land revenue in respect of the land, the subject of the grant.<sup>2</sup> In *Saifuran v. Najaf Ali*,<sup>3</sup> the Board held that grantor meant the person who pays the revenue on land held by another, and grantee meant the person who held the land held rent-free, the revenue of which is paid by the other. This was not approved of in *Bhagwan Singh v. Bisheshar Nath*,<sup>4</sup> though the Court did not actually decide the point. It included, in the case of common lands, the lambardar, as representative of the cosharers.<sup>5</sup> A person who, owing to misrepresentation or mistake, has been paying revenue for another, is not necessarily able to sue under this chapter.<sup>6</sup>

**10. Other rent-free holdings**—Section 188 does not touch rent-free holdings that arose in Agra before the 7th of September, 1926, and in Oudh before the commencement of this Act. Under the Act of 1926 section 184 raised a presumption in favour of a rent-free grant where land had been recorded in the annual registers as without any liability for rent. That section has been omitted, but that does not mean that land which before the dates mentioned were regarded by custom or usage as held rent-free will no longer be in that category. Section 184 was in accordance with the view held elsewhere.<sup>7</sup> In Agra such custom or usage was not recognised,<sup>8</sup> but the courts could in a proper case infer a rent-free grant.<sup>9</sup> Where the entry was that a land was *bila lagan* it did not mean that it was held rent-free<sup>10</sup> but if occupation for a considerable number of years without payment of rent was proved and circumstances showing the express or implied consent of the landlord existed, a presumption of a rent-free grant could be made.<sup>11</sup>

<sup>1</sup> Such as *Ghulam Sarwar v. Muh. Ambar Ali Khan*, I U. D. 382, which was dissented from in *Lehasun-nissa v. Dadich Singh*, 4 O. L. J. 162—III U. D. 606—40 I. C. 60—3 Rev. and Cr. L. J. 169—4 R. D. 894, and *Ganesh Prasad v. Madho Shankar*, II U. D. 519.

<sup>2</sup> *Janki Baran Singh v. Ram Kumar Singh*, 3 O. C. 235

<sup>3</sup> II U. D. 219.

<sup>4</sup> 20 O. C. 37—38 I. C. 677.

<sup>5</sup> *Despa v. Udai*, B. R. 6 of 1903; *Narpat Singh v. Lekha Singh*, II U. D. 492.

<sup>6</sup> *Mata Din v. Kedar Nath*, B. R. 16 of 1910

<sup>7</sup> *Dhanpat v. Russomone*, 10 W. R. 46; *Birendra Kishore v. Bhawal Chandra*, 20 C. L. J. 295—27 I. C. 12; *Naik v. Rajdhari*, 3 Pat. L. W. 220—42 I. C. 843.

<sup>8</sup> *Maharaja of Benares v. Mahabir*, IV U. D. 525; *Samba Singh v. Ram Sumer*, XI U. D. 188—14 R. D. 640.

<sup>9</sup> As in *Seetla Buz Singh v. Abdul Majid*, IV U. D. 640—3 L. R. Rev. 40—5 R. D. 43.

<sup>10</sup> *Samba Singh v. Ram Sumer* and other cases cited above, also *Binayak Rao v. Narain Singh*, IV U. D. 288; *Lallu Singh v. Jangi*, III U. D. 154; *Raja Singh v. Jageshwar*, VII U. D. 277—7 L. R. Rev. 292; *Pancham v. Nihar Singh*, B. R. 5 of 1920—IV U. D. (B. R.) VI—3 L. R. Rev. 308; *Raghu Nath Singh v. Jagat Bahadur Singh*, XI U. D. 79—11 L. R. Rev. 101.

<sup>11</sup> *Kundan Singh v. Misri*, XI U. D. 99 and some of the cases cited above, as also *Shoo Narain Prasad v. Ulfat*, XIV U. D. 74—14 L. R. Rev. 156.

Land recorded as *muafi* or *bila lagan* was almost invariably looked up as land held rent-free.

Land recorded as *bila tasfia lagan* did not imply freedom from liability for rent.

Where one of several co-sharers in a property took less than his proportionate share as his individual property, the remaining co-sharers taking upon themselves the responsibility for the land revenue, this chapter has no application.<sup>1</sup>

Where land was held without payment of rent and without the consent of the landlord, the holder was a trespasser, who could by length of occupation have acquired proprietary right, or tenant right.<sup>2</sup> If such consent could be implied as in the case of grants for planting groves, grazing, building, the land was not held under a rent-free grant so long as the grove, etc., existed, and no question under the chapter arose.<sup>3</sup>

A rent-free grant is created when the proprietor of a land creates rights by which the land can be held rent-free by A whilst the liability for revenue rests on B.<sup>4</sup>

**11. Under-proprietors**—An under-proprietor, unless he holds under a sub-settlement is not a landlord, and a grant by him to hold without payment of rent will not be a rent-free grant.

Nor is an under-proprietor a person against whom action can be taken under the chapter because he holds rent-free or at a favourable rate of rent.—e. g., A *Shankalap* holder specially of the *khudkasht* kind who is usually classed as an under-proprietor.<sup>5</sup>

If an under-proprietor adds land to his holding by encroachment, the superior proprietor was held entitled to proceed under this chapter in respect of the added land.<sup>6</sup>

**189.** A grant of land at a favourable rate of rent means  
 Meaning of grant of land at a favourable rate. in Oudh a grant of land at a rent less than the aggregate of the revenue and local rates payable thereon and in Agra a similar grant made after the commencement of this Act.

1. This section reproduces section 107-J of the Oudh Act, adding for the benefit of Agra "and in Agra.....of this Act."

This was also the view under the Legal Remembrancer Act, of 1876,<sup>7</sup> and is of course now.<sup>8</sup> The test is given in the section. Rulings cited below are more of historical interest. Under section 52, Land Revenue Act of 1876, it was held to mean a rent which was not a fair, reasonable

<sup>1</sup> *Jai Karan Singh v. Dip Narain*, V U. D. 288=4 L. R. Rev. 46=7 R. D. 580.

<sup>2</sup> *Sri Krishna Dat v. Jai Karan Singh*, IV U. D. 207=2 L. R. Rev. 17=6 R. D. 408; *Tiloi Estate v. Mahpal Singh*, III U. D. 143=5 R. D. 544.

<sup>3</sup> *Ganga Charan v. Shankar Sahai*, II U. D. 566.

<sup>4</sup> *Ghulam Sarwar v. Muhammad Ambar Ali Khan*, I U. D. 382.

<sup>5</sup> *Sheo Ratan v. Court of Wards*, I U. D. 279; *Har Prasad v. Ram Pratab Singh* II U. D. 436; *Naikani Singh v. Kewal Singh*, III U. D. 73.

<sup>6</sup> *Jai Karan Singh v. Court of Wards*, II U. D. 272.

<sup>7</sup> *Sarabjit Singh v. Badri Nath*, 3 O. C. 268.

<sup>8</sup> *Tribhuvan Nath v. Ganga Dei*, II U. D. 240, *Court of Wards v. Suraj Bah* I U. D. 268; *Khud Lal v. Dwarka Nath*, XX U. D. 7=1938 R. D. 748.

and equitable rent at the time of the grant or lease, keeping in view the state of things prevailing then.<sup>1</sup>

2. Rent exceeding revenue and cesses is not at a favourable rate.<sup>2</sup> In considering the relation of the rent to the revenue for determining whether or not a holding is held at a favourable rate of rent, the holding should be taken as a whole, and the rent and revenue of individual plots should not be considered.<sup>3</sup>

Land held at a seventh of the economic rent was held at a favourable rate,<sup>4</sup> so land held at a rent which was about a third of the revenue and about an eighth of the rent at circle rates. These cases are of no value now.<sup>5</sup>

Where a tenant was given land deliberately at a concession, *e. g.*, where he was a confidential servant, he could not be ejected as a statutory tenant, but could be proceeded against only under this chapter.<sup>6</sup>

Where the rent of a holding exceeds the valuation at settlement rates, but the word *riyayati* was written against the rent, it did not establish that the rent was at a favourable rate.<sup>7</sup>

The revenue should be calculated on the cultivated area and not on the entire land in the holding,<sup>8</sup> and settlement rates are to be taken.<sup>9</sup> The calculation of rent should be on the accepted and not on the standard rental to see whether it is favourable.<sup>10</sup>

Where both parties to a permanent lease were thakurs and the rent was low, it was presumed that the rate of rent was favourable.<sup>11</sup>

An occupier of land wishing to take the benefit of the section has to show that the rent was, at the time it was fixed, favourable, and not that it has become favourable under a new settlement.<sup>12</sup>

<sup>1</sup> *Pratab Bahadur Singh v. Badlu*, Sel. Ca. No. 263.

<sup>2</sup> *Indarpal Singh v. Murar Mau Estate*, IV U. D. 259—2 L. R. Rev. 143 ; *Uma Nath Baksh Singh v. Badri*, XVI U. D. 388.

<sup>3</sup> *Uma Nath Baksh Singh v. Badri*, XVI U. D. 388.

<sup>4</sup> *Nasim Husain v. Bansi Saran*, XII U. D. 253.

<sup>5</sup> *Gajadhar Prasad v. Sirdar Nihal Singh*, XIII U. D. 56—13 L. R. Rev. 60 ; *Maheshkar Dayal v. Genda*, XX U. D. 255.

<sup>6</sup> *Hub Lal v. Dwarka Nath*, 1939 A. L. J. (B. R.) 7—XX U. D. 47—1938 R. D. 748.

<sup>7</sup> *Ram Harakh v. Tilak Dhari*, II U. D. 478—1 L. R. Rev. 58

<sup>8</sup> *Sher Bahadur Singh v. Partab Bahadur Singh*, IV U. D. 129—1 L. R. Rev. 163—6 Rev. and Cr. L. J. 332.

<sup>9</sup> *Sita Ram v. Sri Ram*, V U. D. 52—3 L. R. Rev. 115.

<sup>10</sup> *Ram Behari v. Baldeo*, 3 L. R. Rev. 77—IV U. D. 653—5 R. D. 56.

<sup>11</sup> *Har Dutt Singh v. Jai Karan Singh*, IV U. D. 21—1 L. R. Rev. 66—6 R. and Cr. L. J. 79.

<sup>12</sup> *Sheo Pal Singh v. Adya Buz Singh*, II U. D. 30 ; *Chandra Shekhar v. Aisa*, IV U. D. 628 ; *Manohar Lal v. Mahesh*, VI U. D. 42—5 L. R. Rev. (Oudh) 11 ; *Gaya Din Misir v. Gaya Din*, IV U. D. 296 ; *Chunni v. Chandrabhan*, 5 L. R. Rev. (Oudh) 145—VI U. D. 228—1924 R. C. 245—8 R. D. 211 ; *Bindeshri Prasad v. Partab Narain*, VI U. D. 451—6 L. R. Rev. 17—1925 R. C. 71 ; *Manohar Lal v. Mahesh*, VI U. D. 42.



A tenant holding at a favourable rate of rent is estopped, in the same way as a *muafidar*, from asserting, as against the mortgagee whom he has ejected, his own want of title.<sup>1</sup>

A village was granted in 1837 as *shankalp* for *gurudakshina*. The grantee held it free of rent or revenue until 1850, when Rs. 416 a year was assessed on it as rent or revenue. This continued to be paid until 1871, when the then talukdar wrote a letter to the grantee saying that he was always to pay that rent. The grant though free to start with became a grant at a favourable rate of rent in 1850, and the letter of 1871 did not create any fresh rights.<sup>2</sup>

The rate of rent should be favourable by deliberate concession and not by accident<sup>3</sup> and if that is so, the proper procedure is resumption and not ejectment.<sup>4</sup>

Where land had since the first Regular Settlement in Oudh been held at a rent equal to the land revenue, this *per se* was evidence that the rent was deliberately favourable.<sup>5</sup>

Where a tenant's rent has been low for a very long time it is deliberately favourable.<sup>6</sup>

This coupled with the fact that previous to that the land had been held rent-free, makes the inference much stronger.<sup>7</sup> Generally, if a person pays no rent in excess of the government revenue, it would constitute a favourable rent.<sup>8</sup> A tenant holding at a favourable rate of rent could not be ejected as an ordinary tenant but had to be proceeded with under the Resumption Chapter.<sup>9</sup>

Where the rate of rent is low by accident and not by deliberate concession, the proper remedy is enhancement under the Enhancement Chapter.<sup>10</sup>

3. When rent is favourable, the *onus* of proving that it was not accidental is not on the tenant.<sup>11</sup>

<sup>1</sup> *Hakim Husain v. Mushtaq Husain*, 1933 A. I. R. Oudh 542=XV U. D. (H. C.) 319=15 L. R. Rev. 42.

<sup>2</sup> *Balgovind v. Rampal Singh*, 4 O. C. 264.

<sup>3</sup> *Hans Raj Singh v. Shambhu*, XVIII U. D. 79=1937 R. D. 116.

<sup>4</sup> *Shafiqussaman v. Tasaddug Husain*, II U. D. 228 ; *Rat Krishna Prasad Singh v. Suraj Pall*, II U. D. 629 ; *Lachmin v. Bilahra Estate*, II U. D. 652 ; *Ram Kumar v. Partab Bahadar Singh*, B. R. 1 of 1917=II U. D. 655 ; *Court of Wards v. Gouri Shankur*, I U. D. 228=1 O. L. J. 697=26 I. C. 624 ; *Partab v. Ajudhia Estate*, 58 I. C. 990=7 O. L. J. 611.

<sup>5</sup> *Sheodarsan v. Ajudhia Estate*, I U. D. 204.

<sup>6</sup> *Rudra Partab Singh v. Ambika Prasad*, 2 U. P. L. R. (B. R.) 123.

<sup>7</sup> *Sheo Darsan v. Ajudhia Estate* ; *Gaya Din v. Alid Husain*, 2 U. P. L. R. (B. R.) 118=IV U. D. 93.

<sup>8</sup> *Lal Tribhuan Nath Singh v. Ganga Dei*, II U. D. 240.

<sup>9</sup> *Ganga Singh v. Partab*, XIV U. D. 457.

<sup>10</sup> *Hanuman Dat v. Sri Ram Kuar*, B. R. 5 of 1903 ; *Ramadhin v. Bhagwati Prasad Singh*, II U. D. 617 , *Court of Wards v. Suraj Bali*, I U. D. 268=1 O. L. J. 236 ; *Raghubar v. Thakur Din*, I U. D. 411=33 I. C. 204=2 O. L. J. 755=29 I. C. 510.

<sup>11</sup> *Ram Bahadur Singh v. Subhao*, IV U. D. 585.

The burden of proving that a rate of rent is favourable lies on the person suing to resume.<sup>1</sup> There was a perpetual lease of three villages at a rent of Rs. 2,191, the lessee being also liable to pay presents, *nachna* presents to dancers, etc., and the patwaris and chaukidars. It was held that the proprietor had failed to prove that the rent is a favourable rent, and that the undefined charges, the expenses of management and so forth, may have been such as to make it a perfectly reasonable rent as between lessor and lessee.

In *Muhammad Nawab Ali Khan v. Mathura*,<sup>2</sup> a lease of land to be held at a rent two annas a bigha below the rent previously paid by the lessee was held to be a reduction of rent and not to be a lease at a favourable rate of rent.

4. In Agra, under section 49 of the Act of 1926, corresponding to certain provisions of the earlier Acts, the rent of tenants holding by custom or practice at favourable rates of rent and where caste was taken into account in determining the rent, had to be fixed with reference to such custom or practice, but the amount was not to be less than the land revenue payable in respect of the holding with an addition of 20 per cent. thereon. Such tenants will hardly come in the category of tenants at favourable rates of rent, unless the amount of their rents is less than the aggregate of the land revenue and the local rates payable thereon.

190. A landlord may, in accordance with the provisions of this Chapter, sue to resume possession of land held rent-free or at a favourable rate of rent, for the fixation of rent or revenue on land held rent-free or for the enhancement of the rent of land held at a favourable rate of rent.

Liability of grant to resumption, or assessment, or enhancement of rent.

1. The section corresponds to section 107-A of the Oudh Act. Cf. sections 187 and 188 of the Agra Act of 1926 and section 150 of the Act of 1901.

The class of grantees at a favourable rate of rent has been introduced in the province of Agra. Hence the provisions relating to them.

Note the use of the word "landlord" (not "landholder"); see section 3(12).

2. Five brothers, one a minor, owned certain fields in a zamindari, which were foreclosed, except as to the minor's fifth share, in favour of A. The zamindari was partitioned and the fields fell in A's share. A failed in his suit under section 127 of the Oudh Act to get rent assessed on the fields on the ground *inter alia* that they were not held without consent. In his subsequent suit under section 107-A, Oudh Act, (now this section) it was held that in view of the finding in the previous suit that section 127 did not apply, the proper procedure was action under the Resumption Chapter to have the rent fixed.<sup>3</sup>

<sup>1</sup> *Par ab Bahadur Singh v. Badlu*, Sel. Ca. No. 263, affirmed and applied in 25 Cal. 479 (P. C.)

<sup>2</sup> B. R. 4 of 1905.

<sup>3</sup> *Manohar Lal v. Kishore Singh*, VI U. D. 416=6 L. R. Rev. (Oudh) 54=1923 R. O. 209=8 R. D. 84.

3. **Suit.**—A suit under sections 190, 192 is No. 20, a suit under sections 190, 194 is No. 21 and a suit under sections 190, 195 is No. 22 of Group B of the 4th Schedule. There is no limitation for the first two, and limitation for the third is 12 years which runs as indicated in section 196. They lie in the court of an Assistant Collector of the first class. The right of appeal is regulated by section 202. The court-fee is calculated on the annual letting value of the land as estimated by the plaintiff.

**191.** All land held rent-free or at a favourable rate of rent shall be liable to fixation of rent or revenue or to enhancement of rent, as the case may be, unless—

Grants not liable to fixation of revenue or rent.

(1) in Agra,—

- (a) it is held rent-free in a district or portion of a district which is permanently settled under a grant made prior to the permanent settlement ; or
- (b) it is held rent-free under a judicial decision of a date prior to the twenty-second day of December, 1873 ; or
- (c) it is held rent-free by a holder whose title is based on a transfer of the land for valuable consideration made by the landlord or by a rent-free holder thereof before the twenty-second day of December, 1873, provided that at that date the right of the landlord to resume the land had been barred by section 28 of Act X of 1859 or by article 130 of the Second Schedule of the Indian Limitation Act, of 1871 ;

(2) in Oudh,—

- (a) it is held rent-free or at a favourable rate of rent under a Crown grant ; or
- (b) it is held rent-free or at a favourable rate of rent under a judicial decision of a date prior to the first day of January, 1902 ; or
- (c) it was acquired rent-free or at a favourable rate of rent for a valuable consideration before the tenth day of October, 1876, and the right to resume it had, before that date, been barred by the law of limitation :

Provided that nothing in this section shall apply to any grants in Oudh to which the provisions of section 79 of the United Provinces Land Revenue Act, 1901, are applicable.

1. Sub-section (1) reproduces in effect section 185 of the Agra Act, and sub-section (2) reproduces in effect section 107-B of the Oudh Act, omitting the first proviso thereof, and substituting "a crown grant" for "a grant sanctioned by the Governor-General in Council or Governor in Council."

Section 185 Clauses (b) and (c) of the Act of 1926 reproduced in effect clauses (a) and (b) of section 151 of Act II of 1901, and corresponded to section 30 (c) and (f) of the Acts of 1873 and 1881.

2. Clause (a).—The grant must be proved to have been made prior to the permanent settlement. As section 191 does not fix the date of the grant, the claimant will have to prove such date.

3. Held—i. e., Not necessarily granted or acquired.

4. Clause (b). Judicial decision, i. e., one pronounced by an officer competent to deal with the matter.<sup>1</sup> A *rubkar* of a settlement officer which finds certain land to be held rent-free is not a judicial decision.<sup>2</sup> The expression is common to clause (b) of both sub-sections. If an officer on revision of settlement merely enters the facts as he finds them without deciding any question of right, it is not a judicial decision.<sup>3</sup> If he decides on the opposite-party's admission that it is *muafi*, that is a judicial decision,<sup>4</sup> so if he decides it on evidence.<sup>5</sup> A settlement court decree declaring a person as entitled to hold certain land rent-free so long as there are heirs to succeed him is a judicial decision.<sup>6</sup> So such a decree holding a person to be a *Sirdar Hukmi bila lagan*.<sup>7</sup> So a judgment of the settlement officer, holding that the grantee was entitled to hold the land without payment of revenue and refusing an application of the zamindar to assess revenue over it.<sup>8</sup> A judicial decision means one which has not been cancelled.<sup>9</sup>

A judicial decision must be a decision implying that the rent-free holder is entitled to hold rent-free in perpetuity and not one merely declaring him to be a *muafidar*.<sup>10</sup>

Hence a decision merely declaring the claimant to be a *muafidar*,<sup>11</sup> or declaring a claimant to be entitled to be recorded as proprietor<sup>12</sup> of the

<sup>1</sup> *Tika Ram Singh v. Kuar Sen*, II U. D. 574.

<sup>2</sup> *Shadi Lal v. Benak Rao*, II U. D. 126, see also *Tika Ram v. Kuar Sen*, II U. D. 574.

<sup>3</sup> *Muhammad Karimulla Khan v. Jhamman Singh*, 11 A. L. J. 277, approving of *Daya Shankar v. Mashar Husain*, B. R. 6 of 1909.

<sup>4</sup> *Kandhai Prasad v. Suraj Bali*, II U. D. 611.

<sup>5</sup> *Udit Narain Singh v. Indra Kuar*, II U. D. 645=2 O. L. J. 728=33 I. C. 145. See also *Amir Hasan Khan v. Gopal Ram*, 4 O. C. 252.

<sup>6</sup> *Sahibunissa v. Karamat Ali*, 1 O. L. J. 693=26 I. C. 722=I U. D. 239.

<sup>7</sup> *Udit Narain Singh v. Indra Kuar*, 33 I. C. 145=2 O. L. J. 728=II U. D. 645.

<sup>8</sup> *Zain Ali v. Tasaduk Rasul Khan*, I U. D. 179=29 I. C. 552.

<sup>9</sup> *Court of Wards v. Mirtanji Bux Singh*, I U. D. 387=33 I. C. 89.

<sup>10</sup> *Ahmad Husain v. Khudadi*, II U. D. 305; *Ram Bhagat v. Sri Kamalapat Prasad Singh*, II U. D. 540.

<sup>11</sup> *Ahmad Husain v. Khudadi*, II U. D. 305.

<sup>12</sup> *Syed Muhammad Baqar v. Shso Mohan Singh*, I U. D. 338.

lands, described as groves, with the conditions attached that the lands were to be held in subordination to the superior proprietor and that if any revenue were assessed on the lands the holder should be responsible for it, and, if the groves were cut down, whether assessed to revenue or not, the holders were to pay a rent based on the rate payable by the best land in the village, is not a judicial decision under which the land is held rent-free.

The persons to whom the settlement officer decreed rent-free lands are entitled to hold those lands rent-free in perpetuity. An agreement between the parties conferring under-proprietary rights according to the settlement officer's report, followed by the entry of under proprietary rights, has the effect of a judicial decision, though there is no order of the court confirming the agreement.<sup>1</sup>

The decision of the court of a Settlement Deputy Collector in 1873 based on a compromise that *A* held a land as *muafi khidmati* and that *A* was the servant of a Muhammadan shrine and would hold the land as rent-free so long as he performed the services of the shrine is a judicial decision and the land is held under it.<sup>2</sup>

**Held under a judicial decision.**—The expression is ambiguous and has given rise to a difference of opinion between the Judicial Commissioner's Court and the Board of Revenue. In *Ameer Hasan Khan v. Ram Gopal*,<sup>3</sup> the Judicial Commissioner held that to come within section 55 (a) of the Oudh Land Revenue Act, 1876, which corresponds to clause (b) of section 107-B of the Oudh Rent Act, and section 191 of this Act, the land must be held rent-free *by virtue of a judicial decision* and not by virtue of a grant preceding such decision, the officer in his decision merely giving effect to such grant, or confirming the *status quo ante*. In this case, the heir of the original grantee, on being evicted from his holding, sued in a Civil Court for recovery of possession on the allegation that the original grant was heritable and not for life only. The Judicial Commissioner on appeal ruled that the grant was a heritable one and that the heir of the original grantee had been wrongfully dispossessed. This decision was relied on as a judicial decision within the meaning of section 55 (a) Oudh Land Revenue Act, 1876, in a proceeding for resumption. The Judicial Commissioner held against the plea on the ground that the land was not held by virtue of the previous judicial decision which merely confirmed the *status quo ante*. It will be noticed that the previous decision only declared the grant to be heritable and did not touch the question whether it was rent-free or resumable and hence under no circumstances could it be said that the land was held rent-free under it. The opinion of the Judicial Commissioner in the subsequent case is therefore, purely *obiter*.

The case was cited before the Board of Revenue in *Daya Shankar v. Mazhar Husain*.<sup>4</sup> Porter, S. M., differentiated it on the ground indicated

<sup>1</sup> *Muhammad Ali Muhammad Khan v. Lalta Buz*, 2 L. R. Rev. 159—IV U. D. 655—5 R. D. 393.

<sup>2</sup> *Bahadur Singh v. Husain Shah*, XI U. D. 75—14 R. D. 348.

<sup>3</sup> 4 O. C. 252.

<sup>4</sup> B. R. 6 of 1909.

above, but Baillie, J. M. disagreed with the opinion of the Judicial Commissioner.

4. 22nd December, 1873, i. e., on the date on which the Rent Act, 1873, came into operation. Either of the two events mentioned in clauses (b) and (c) should have happened before this date.

The vendor while selling a certain land reserves to himself a portion to be held revenue-free. This is a grant for valuable consideration and falls with this clause.<sup>1</sup>

5. Cl. (c)—Cl. (c) of sub-sections (1) and (2) has in common the passing of valuable consideration. To bring a case under this clause, the title of the rent-free holder must be proved (a) to be based on a transfer of the land and (b) such transfer must have been for valuable consideration and (c) to have been made by the proprietor or rent-free holder, and (d) before 22nd December 1873, (in Oudh, before the 10th of October, 1876) and (e) on that the right of resumption of the proprietor must have been barred under the law of limitation.

Section 185 of the Act of 1926 was not retrospective and the incidents of a holding acquired before 7 September 1926 were not controlled by the Act. Groveland was not land before that date. The bar of section 185 (c) of that Act could not be set up against a civil suit for compensation for cutting some trees in a grove, which was rent-free but the grant of which rent-free was not for service or for any valuable consideration. The grove had been acquired in 1859. The learned Judge observed that it had not been shown that "at any time prior to the Act of 1926 land was ever held by any court to include groveland." Whatever the merits of this decision may be, the observation is not justified, for the High Court in *Muhammad Isa Khan v. Muhammad Khan*,<sup>2</sup> held at page 66 that land included groveland under Act XII of 1881. The learned judge also ruled that section 185 (c) of the Act of 1926 was confined to a suit under Chapter XI and did not apply to a civil suit, *Tika v. Kulsum-un-nissa*.<sup>3</sup>

6. Principles of resumption.—The principles on which the law of resumption is based are discussed by the Board in an Oudh case, the provisions of the Rent Act of which are almost word for word the same as those of Chapter XI of the Tenancy Act, 1926. There A sold his proprietary right to B with reservation of some land to be held rent-free by him. the Board decided that the interest reserved to A was underproprietary. The legal representatives of B now sued for assessment of the land to rent. The defence was that the exemption from payment of rent was based on valuable consideration and that the land was not liable to be assessed to rent or revenue. It will be seen that the case against assessment was as strong as it could be. The Board, Roberts and Hooper, Members, decreed the claim and explained the principles underlying resumption as follows<sup>4</sup>:—

<sup>1</sup> *Dwarka Prasad v. Phul Kunwar*, I U. D 38=32 I C 10.

<sup>2</sup> 40 All 60.

<sup>3</sup> 14 L. R. Rev. 193=XIV U D (II C) 66

<sup>4</sup> *Govind Prasad v. Suraj Baksh*, B. R. 4 of 1903.

"It is a cardinal principle of the revenue law that all land is liable to the payment of revenue and that the revenue<sup>1</sup> is a charge on the land and the first charge.<sup>2</sup> It is not open to the proprietor of any land to substitute by private contract his individual liability for the liability of the 'rents, profits or produce' of the land itself or to make the charge on one parcel of land a charge on another parcel of land, except in so far as he is by law permitted to do so. The extent to which he is so permitted, or in other words, the extent to which contracts or grants to hold land free of rent or revenue are valid against the proprietor who has engaged for the land revenue is the subject of the law of resumption. It rests upon the general axiom of law that the lien of Government upon the produce of land in order to pay the revenue cannot be affected by private contract to which the Government is not a party.

"Rent-free grants under the conditions expressed in proviso to section 107B<sup>3</sup> are allowed to hold good against the grantor till he dies or till the expiry of the current settlement, whichever event first occurs. A grantee, in effect, engages to pay from the assets of the remainder of his mahal the revenue chargeable on the land which he grants free of rent. The law does not allow such an engagement to be binding on his successor or beyond the term of the current settlement; and the reason is that such grants affect the grantor's liability to pay the revenue and affect the security on which the settlement engagement is based. If no limit were put to such alienation, the punctual realisation of the land revenue might be endangered.

"The fact that the grant was bought does not affect the matter. A proprietor might sell his mahal to another person and, for full consideration, engage to pay the land revenue. That engagement would not prevent the purchaser from being liable to Government for the revenue<sup>4</sup>. In the same way, if the property sold was an under-proprietary right, the under-proprietor is liable to pay, through the proprietor of the mahal, the revenue assessable on the holding, notwithstanding any engagement to the contrary with the proprietor of the mahal. Such engagement is only valid to the extent to which the Government assents to it. By no contract can the owner of land escape the liability to pay the revenue chargeable upon the land either directly as proprietor, or as under-proprietor through the proprietor of the mahal. There is no reason, therefore, on the ground that consideration was paid for a right which the grantor had no authority to confer, namely, that of holding rent-free for ever, to seek a construction of the law or an interpretation of the sale-deed which will maintain the validity of the agreement. If any preference should be shown it should be in favour of the construction which gives effect to the plain intention of the law<sup>5</sup>"

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<sup>1</sup> Section 58, Land Revenue Act.

<sup>2</sup> Section 141, *ib.*

<sup>3</sup> Corresponds to section 196 (a) of the U. P. Tenancy Act.

<sup>4</sup> Sections 141 and 142, Land Revenue Act.

<sup>5</sup> *Naurangi Lal v. Khoji Lal*, B. R. 18 of 1925—6 L. R. Rev. 263—12 B. and Cr. L. J. 14—VII U. D. V—1925 R. C. 532.

Now Explanation I to section 188 shows that such reservation amounts to a rent-free grant.

**7. Sub-section (2) clause (c).—At a favourable rate of rent.**

The acquisition rent-free or at a favourable rate of rent must have taken place before the 10th of October, 1876 and the right to resume must have become barred previous to that date. Hence grants or acquisitions rent-free or at a favourable rate of rent after 1864 will not fall under clause (c), and are liable to resumption or enhancement of rent. A vendor who reserved a plot of land rent free in perpetuity acquired it for valuable consideration.<sup>1</sup>

In 1897, there was a circular of the Board of Revenue, 23—II, afterwards 13—I, rule 18 which laid down that in a case where a proprietor parted with his entire share in a village and had reserved the ownership of certain plots as *sir*, if the agreement was that the plots should be held rent-free, the tenure so created was to be under-proprietary; whereas if the owner of the reserved plots was to pay the revenue assessed upon them, he was to be treated as proprietor, and revenue should be separately assessed upon the plots.

**8. The proviso.**—Section 79, Land Revenue Act, provides for assessment of rent on under-proprietors and on holders of heritable, non-transferable leases holding under a judicial decision. The proviso exempts from the operation of section 191 (2) these two classes of persons, i. e., a court acting under this chapter cannot assess or enhance the rent of or eject them.<sup>2</sup> The following cases will be found useful.

A person who holds certain land by way of *kabzadari* (a right something between *sir* and *kabzadari*) at a low rate of rent is not a tenant with a right of occupancy as defined in section 5, Oudh Rent Act, and is liable to have his rent enhanced under section 33 of that Act, as no permanency was intended so as to make the rent adjustable under section 79, Land Revenue Act at settlement only.<sup>3</sup> That section is not confined to tenants with rights of occupancy under section 5, Rent Act.<sup>4</sup>

A settlement decree declared *A* to be entitled to *kabzadari* with right of inheritance, at the old rent and not at a rent  $12\frac{1}{2}$  per cent. below the rates paid by statutory tenants of the same class, and declared a previous decree for enhancement as illegal and directed only the rent fixed to be payable, it was held that *kabzadari* connotes a permanent lease and not necessarily occupancy rights, and that the rent could not be

<sup>1</sup> *Dwarka Prasad v. Phul Kunwar*, I U. D. 38

<sup>2</sup> *Mansoor Husain v. Dawar Ali*, 1935 A. I. R. Oudh 406—XVI U. D. 252—1935 O. W. N. 537—1935 R. D. 247—155 I. C. 295.

<sup>3</sup> *Bunyad Husain v. Ram Sahai Singh*, I U. D. 357—32 I. C. 415—33 I. C. 266—2 O. L. J. 748; *Derz Estate v. Ram Phal*, II U. D. 432; *Gulab v. Balbhadar*, VI U. D. 105.

<sup>4</sup> *Asim Ali Khan v. Shunkar Singh*, B. R. 3 of 1893.



enhanced until a resettlement under section 79, L. R. Act.<sup>1</sup> In *Bindha Singh v. Ilahi Khanum*,<sup>2</sup> the word *kabzadari* was held not to connote occupancy rights necessarily, but the meaning was to be ascertained from a careful consideration of the claim made before and the judgment recorded by the settlement court; and that a rent fixed under section 40 of the Oudh Rent Act could not be enhanced under section 33 of that Act.

A right of *kabzadari dawami* declared to be heritable and transferable is higher than occupancy right, and the rent of the holder of such right cannot be enhanced under section 33, Oudh Rent Act, but may be enhanced at the next settlement under section 79, L. R. Act.<sup>3</sup>

In *Bhabuti Singh v. Bakar Husain*,<sup>4</sup> a dispute as to *sir* and under-proprietary rights was settled by a compromise recorded by the court by which the occupant was to hold some land as a tenant under section 5, Oudh Rent Act, at a certain rental. It was held that this compromise bound the parties and there was nothing in section 33 or section 34, of that Act, in bar of such an agreement, and therefore enhancement could not take place under the section. The reason assigned is that the Board considered the fixation of the rent as an essential part of the compromise.

In *Muhammad Husain v. Umrao*,<sup>5</sup> Civil Court rents were held enhanceable, where the compromise decree merely declared the occupier to be a tenant with rights of occupancy without declaring the rent, although the rent previously payable and mentioned in the plaint continued to be paid afterwards.

Where a tenant held *sir* land under a heritable but non-transferable lease, his rent could not be enhanced under section 33, Oudh Rent Act, but could be, at the next settlement, under section 79, L. R. Act.<sup>6</sup> The rent of a perpetual lessee holding under a decree of court could not be enhanced under section 33, Oudh Rent Act, but under section 79, L. R. Act, at settlement.<sup>7</sup> So where land was held under a contract for an indefinite term.<sup>8</sup>

The rent of a person, who was not a tenant with a right of occupancy under section 5 or section 6, Oudh Rent Act, but held at a rent fixed by a judicial decision, cannot be enhanced under section 33.<sup>9</sup>

<sup>1</sup> *Baldeo Baksh Singh v. Sahib-un-nissa*, B. R. 11 of 1912.

<sup>2</sup> B. R. 23 of 1892.

<sup>3</sup> *Ram Dayal v. Bishnath Singh*, U. D. Vol. I., p. 398.

<sup>4</sup> B. R. 21 of 1892.

<sup>5</sup> B. R. 9 of 1893.

<sup>6</sup> *Indardawan Singh v. Jugdatt Singh*, I U. D. 196—29 I. C. 571.

<sup>7</sup> *Dost Muhammad Khan v. Rahman Khan*, II U. D. 624—2 O. L. J. 716—33 I. C. 180; *Raghuraj Singh v. Ram Lotan*, II U. D. 624—33 I. C. 33, 186—2 O. L. J. 769.

<sup>8</sup> *Chedi v. Shah Hayat*, II U. D. 618—33 I. C. 157.

<sup>9</sup> *Lutf Ali v. Ram Lal*, II U. D. 645—3 O. L. J. 12—33 I. C. 786; *Jai Patter Singh v. Ram Ratan Singh*, 1 O. L. J. 124.

The rent of a person, entered as an occupancy tenant under a decision of the settlement court holding him to have a heritable and not transferable right, could be adjusted under section 79, L. R. Act, but not under section 33, Oudh Rent Act.

Section 79, Land Revenue Act, applies only to holders of heritable but non-transferable leases held under judicial decisions, and not by contract. Hence the rents of tenants holding at favourable rates of rent can be enhanced under this section.

Section 79 applies to all under-proprietors. Rule 18 of the rules framed under section 234 of that Act, to the effect that where no rent was reserved a superior proprietor could apply to resume the rent-free under-proprietary holding under Chapter VII-A of the Oudh Rent Act, was not justified by the provisions of section 234 or section 79 of the Land Revenue Act, and in so far as it excluded rent-free under-proprietors from the operation of section 79 was devoid of any legal authority.<sup>2</sup>

Under-proprietary tenures paying no rent at all fall under chapter VIIA, Oudh Rent Act; those paying rent must be dealt with under section 79, U. P. Land Revenue Act.<sup>3</sup> In fact the rules framed under section 234, U. P. Land Revenue Act, to which reference is made under section 79 of the same, do not contemplate the assessment, by settlement officers, to rent of land held rent-free, and such officers are not competent to assess such land to rent, the proper remedy being under the Resumption Chapter of the Rent Act.<sup>4</sup>

**192.** (1) Subject to the provisions of section 191 a landlord  
 Declaration that or a grantee or a tenant of a grantee may  
 grantee is proprietor or sue for a declaration that land held rent-free  
 under-proprietor. or at a favourable rate of rent—

(a) in Agra is held in proprietary right, and for the fixation of revenue thereon, or

(b) in Oudh is held in under-proprietary right and for the fixation of rent thereon.

(2) No suit shall lie under the provisions of sub-section (1) unless such land—

(a) is held under a grant made in perpetuity and in consideration of the loss or surrender of a right previously vested in the grantee, or

(b) is held under a grant made in perpetuity by a written instrument for valuable consideration, or

<sup>1</sup> *Sukhpal Singh v. Brij Kishore*, 40 I. C. 63=4 O. L. J. 166=3 Rev. and Cr. L. J. 196=III U. D. 612.

<sup>2</sup> *Shankar Sahai v. Gajadar Prasad*, 20 O. C. 171.

<sup>3</sup> *Lachman Singh v. Madho Prasad*, I U. D. 349.

<sup>4</sup> *Ram Dutt v. Court of Wards*, B. R. 5 of 1914.

(c) not being held for the performance of some service, religious or secular, or conditionally, or for a term, has been held in Agra rent-free for fifty years immediately before the seventh day of September, 1926 or in Oudh rent-free or at a favourable rate of rent for fifty years.

(3) When rent or revenue is fixed on such land under the provisions of this section, any tenant of the grantee shall become a hereditary tenant of his holding.

1. Sub-section (1) of this section and sub-section (1) of section 193 correspond to and reproduce in effect most of section 186 of the Act of 1926, and sub-section (2) corresponds to section 107H of the Oudh Act.

The important words "and by two successors in interest to the original grantee, or, where there was more than one such grantee, to any one of such grantees" occurring in section 186 of the Agra Act have been omitted and so also the explanation to that section.

The words "subject to the provisions of section 191" have been added to emphasize that where resumption, or fixation or enhancement of rent can be had proprietary right cannot be declared.

Sub-section (3) is new and indicates another case where hereditary tenancy arises

2. The persons who can sue under section 192 are the landlord, the grantee, and a tenant of such grantee. The relief to be sought is in respect of land held rent-free or at a favourable rate of rent. If such character of land or the status of the plaintiff as landlord, grantee or grantee's tenant is denied, plaintiff must prove that he is entitled to sue under the section and that the land is held rent-free or at a favourable rate of rent. When he has established this, he will be entitled to the relief mentioned in the section, subject however to the conditions of sub-section (2), viz. (a) in Agra, that the land is held in proprietary right with a prayer for fixation of revenue, (b) in Oudh, that the land is held at a favourable rate of rent, with a prayer for fixation of rent.

The proprietary or under-proprietary right will arise from the date of the declaration and not from before.<sup>1</sup>

3. Sub-section (2)—The cases contemplated by this sub-section are :—

(a) land which was acquired in perpetuity in consideration of the loss or surrender of a right previously vested in the grantee ;

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<sup>1</sup> *Gur Prasad v. Dudh Nath*, B. R. 11 of 1926=4 O. W. N. 447=8 L. R. Rev. 137=1927 R. C. 141 ; *Ram Ghulam v. Ram Bhajan*, 1939 A. L. J. 157=1939 B. D. 107 ; *Partab Bahadur Singh v. Bajrang Bali Singh*, 11 O. C. 187 ; *Kushar Das v. Balbhaddur Singh*, 4 O. W. N. 1269=10 L. R. Rev. 2, but see *Bala Din v. Ajodhia*, VI U. D. (H. C.) 310=5 L. R. Rev. (Oudh) 196.

(see *Tiloi Estate v. Bindeshri Prasad*.<sup>1</sup> *Saifuran v. Najaf Khan*,<sup>2</sup> for some cases);

(b) land which was acquired in perpetuity by a written instrument and for a valuable consideration.

(c) land which not being held (i) for the performance of some service, religious or secular, or (ii) conditionally or (iii) for a term has been held for fifty years, in Agra, rent-free or in Oudh, rent-free or at a favourable rate of rent.

This excludes lands held for the performance of service or for a term or conditionally from the benefit of a declaration under the section.<sup>3</sup>

In either of these cases where the land is not held as specified above in (c) the grantee holds the land in proprietary or under-proprietary right and is liable to pay the revenue or rent thereon.<sup>4</sup> Where the holder of a rent-free grove was recorded as tenant, and on the land ceasing to be grove, revenue was assessed on it and an engagement to pay the same was taken from the zamindar, it was held that the mere fact that the tenant paid the revenue did not constitute him the proprietor, and that he was only a tenant.<sup>5</sup>

This renders useless the cases for and against service grant falling under the chapter as being for consideration.<sup>6</sup>

Land granted not absolutely but by way of maintenance is not within the section,<sup>7</sup> unless the grant was in consideration of the loss or surrender of a valid right in the grantee.

Where a land recorded as *Haqiyat Mutfarriqa* free of revenue has never been called *Nankar*, *Shankalap* or the like, the presumption is against its having been granted and therefore this section will not apply.<sup>8</sup>

4. In perpetuity—There is no presumption that a lease is perpetual and hereditary unless it says so clearly and definitely.<sup>9</sup>

A compromise by which the landlord granted some land to A at a fixed rate with liberty to raise the rent after A's death is not in perpetuity.<sup>10</sup>

<sup>1</sup> 1 U. D. 165 ;

<sup>2</sup> 11 U. D. 219.

<sup>3</sup> See *Baij Nath Rai v. Suberna*, 1934 A. L. J. 655=1934 A. I. R. All. 654=XV U. D. (H. C.) 118.

<sup>4</sup> *Lachman Singh v. Raghunath Singh*, 11 U. D. 230.

<sup>5</sup> *Girwar Sahai v. Janaki Prasad*, B. R. 3 of 1885.

<sup>6</sup> *E. g. Chhedi Lal v. Deputy Commissioner*, (Oudh) Sel. Ca. No. 244; *Bhagwan Das v. Deputy Commissioner*, Sel. Ca. No. 288; *Chandika Prasad v. Shankar Dayal*, Sel. Ca. No. 163; Sol. Cases 36 and 37; *Gajadhar Singh v. Subhan*, Sel. Ca. No. 100.

<sup>7</sup> *Narpat Sahai v. Gur Boksh*, 1 O. L. J. 589=26 I. C. 686=1 U. D. 234; *Bhagwan Singh v. Bishreshar Nath*, 20 O. C. 37=38 I. C. 677.

<sup>8</sup> *Kumuda Prasad v. Deo Nandan Singh*, V U. D. 111=1922 R. C. 39=3 L. R. Rev. 418=6 R. D. 395.

<sup>9</sup> *Jangi v. Muhammad Nasim*, 1 U. D. 350=2 O. L. J. 395=28 I. C. 471.

<sup>10</sup> *Jangi v. Muhammad Nasim*, 1 U. D. 359.

Clause (b) of sub-section (2) does not require that the land should have been granted in perpetuity at a favourable rate of rent, provided that the rate of rent is favourable now, *i. e.*, it requires simply that the original acquisition ought to have been in perpetuity.<sup>1</sup>

A grant for life terminates on the death of the grantee. His heir does not continue the original grant.<sup>2</sup> A grant in which no specific period is fixed, is generally one for life only.<sup>3</sup>

A grant for maintenance is for life only, though the words *hamesha ke liye* are added.<sup>4</sup>

5. **Valuable consideration.**—*Dihdari* land connotes payment of valuable consideration<sup>5</sup>.

If the manager of an estate merges his own private property in the estate and contents himself with certain rent-free lands, he acquires this land for a valuable consideration.<sup>6</sup> Lending money at a rate of interest lower than the market rate is valuable consideration.<sup>7</sup>

The valuable consideration must be to the proprietor and the written instrument must have been executed by the proprietor and not by a rent-free grantee from him.

6. **For fifty years**—The expression “immediately before the 7th day of September, 1926” to be found after the words “fifty years” puts an end to grants which are not in perpetuity and for consideration, *i. e.*, to grants which do not fall under clause (a) or (b) of section 192. The fifty years must have expired before 7th September 1926, and if the expression is taken literally, expired immediately before such date; *i. e.*, the land must have been held rent-free from 7th September 1876 to 7th September 1926. Land held rent-free say from first January 1860 to the present time is outside the scope of clause (c). That the legislature meant to produce this seemingly absurd result is doubtful.

The words *immediately before* occurred in the definition of *sir* in section 4 (12) of the Land Revenue Act, 1901, as originally passed (the word *immediately* being repealed at a later date), and it was held that cultivation for any 12 years prior to 31st December 1901 did not make the land *sir*, but that the cultivation must have been continued for

<sup>1</sup> *Jang v. Muhammad Nasim*, I U. D. 350.

<sup>2</sup> 3 O. C. 43.

<sup>3</sup> Sel. Ca. No. 195, approved of in Sel. Ca. No. 209.

<sup>4</sup> Sel. Ca. 209, *Bunyad Husam v. Hazirunissa*, 35 I. C. 764=3 O. L. J. 354.

<sup>5</sup> *Ratipal Singh v. Udaibhan Partab Singh*, II U. D. 472; *Gaya Din v. Abilakh Singh*, II U. D. 422.

<sup>6</sup> *Mahipat Singh v. Narendra Shamsheer Jang*, II U. D. 477.

<sup>7</sup> *Rameshwar v. Gauri Shanker*, II U. D. 542; *Baldeo v. Juwahir*, II U. D. 143.

<sup>8</sup> *Lehazunnissa v. Dudhich Singh*, 4 O. L. J. 162=40 I. C. 60=3 Rev. and Cr. L. J. 169=III U. D. 606 (dissenting from *Ghulam Sarwar v. Muhammad Ambar Ali Khan*, I U. D. 382=25 I. C. 594, which had held to the contrary); *Ganesh Prasad v. Madho Shankar*, II U. D. 519.

12 years<sup>1</sup> ending with 31st December 1901. The two contrary rulings cited in the footnote proceeded on the basis that *sir* rights had been acquired before of the Act 1901 had come into force and could not be destroyed by that Act. Considering that section 6, U. P. General Clauses Act, keeps intact all rights and privileges before an Act comes into force, and in view of the rulings cited above, the intention of the legislature may be taken to be that all rent-free grants which had existed for 50 years or more prior to 7th September 1926 come within cl. (c).

It had been held in Oudh that there was nothing in the law which justified the conclusion that a person to claim under-proprietary rights had to be in possession for 50 years either as holding rent-free all the time or at favourable rates all the time. He might be a *muafi* holder part of the time and holding at a favourable rate for the rest ; if the combined occupation is for 50 years or more under-proprietary rights can be claimed.<sup>2</sup>

7. It is a moot question whether a rent-free grantee is liable to be assessed with revenue in all mahals, whether revenue-free or assessed with revenue or only in the latter. The section as it stands does not differentiate between the two classes of cases.

There is a difference between a mahal the revenue of which has been assigned and a mahal which is a revenue-free mahal, the revenue of which has been remitted.<sup>3</sup>

It has been held that in a mahal the revenue of which has been remitted (i.e., a revenue-free mahal), a land which has been held rent-free for 50 years becomes under cl. (c) proprietary land of the holder, who becomes under sub-section (2) liable for the revenue, but since the mahal is revenue-free the land will also remain revenue-free.<sup>4</sup>

Section 192 will apply only if there is revenue payable by the proprietor on the land, and therefore if a *muafi* area is not included within a *khata khewat* on which alone revenue is assessed, a suit under this section will not lie ;<sup>5</sup> and only the proprietor of a *khewat* can sue

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<sup>1</sup> *Ram Bharosey v. Sampat Rai*, II U. D. 38—2 R. and Cr. L. J. 23 ; *Sheo Ghulam v. Parmeshar Lal*, (B. R.) 1 of 1920—III U. D. 711—6 R. and Cr. L. J. 99—2 U. P. L. R. (B. R.) 10—3 L. R. Rev. 304—1 L. R. Rev. 159—56 I. C. 646 ; *Angnu v. Bhobuti*, V U. D. 300—1922 R. C. 436—4 L. R. Rev. 31—9 R. and Cr. L. J. 86—7 R. D. 319—7 R. D. 179, *Contra*, *Sukhnandan Singh v. Bhagwan*, II U. D. 180, *Baiju v. Lachminia*, II U. D. 385.

<sup>2</sup> *Hunter v. Ram Bakhs*, XII U. D. 38, relying on *Lachman Singh v. Raghu Nath Singh*, II U. D. 230 ; *Sheo Nath v. Ganesh Bux Singh*, VI U. D. 66.

<sup>3</sup> *Sri Ballabh Lalji v. Sri Gordhan Lalji*, XII U. D. 6.

<sup>4</sup> *Sri Ballabh Lalji v. Sri Gordhan Lalji*, XII U. D. 6.

<sup>5</sup> *Sri Ram Chandra Naik Kalya v. Satya Narain*, XI U. D. (H. C.) 246—11 L. R. Rev. 198.

in respect of land which is entered in the *khatauni* as appertaining to the *khewat khata* of the plaintiff.<sup>1</sup>

8. Where land granted rent-free is subsequently planted with a grove and then the grove ceases to exist, the period during which the grove existed is counted towards the 50 years,<sup>2</sup> but not if the original grant was for planting a grove.<sup>3</sup> If a grant to plant a grove was made after the 6th of September, 1926 in Agra or the 10th of February, 1922, in Oudh, the period during which the grove retains its character will not count towards the 50 years. A *muafidar* in order to establish his proprietary rights produced a settlement *khassra* 47 years old showing that his grandfather was then occupying the land as *muafi*. It may be fairly presumed that the *muafi* was 50 years old.<sup>4</sup> Statements of witnesses that they had heard from their fathers and grandfathers that certain land had been held for 50 years are admissible, as the above facts would be matters of common knowledge in the village.<sup>5</sup>

Admissions or statements by a proprietor's agent that an ancestor of the defendant had held the land as *muafi* at the first regular settlement in Oudh were held admissible in I U. D. 246. It was also held that oral evidence, the only kind of evidence favourable, that the land was held *muafi* prior to the first regular settlement by the defendant's grandfather (in order to show that it had been held for 50 years and more) should not be disbelieved on general grounds not affecting the credit of any particular witness.<sup>6</sup> Where the status of a person was in 1870 declared by a decree to be an occupancy tenant's, but later, as a result of a decree in an analogous suit, he was treated by the zamindar and later settlement officers as an under-proprietor for nearly 50 years and he was also recorded as such in the yearly settlement records, he should be treated as an under-proprietor.<sup>7</sup>

9. **Suit ; Jurisdiction.**—A suit for a declaration under sections 190, 192 falls in Group B (No. 20) of the Fourth Schedule, and fell under section 108 (5 A) of the Oudh Rent Act. A suit for determining whether a grant falls within cl. (c) lies in a revenue court.<sup>8</sup> A suit for a declaration that *muafi* rights have ripened into proprietary rights does not lie

<sup>1</sup> *Ibid.*

<sup>2</sup> *Muh. Isa Khan v. Muh. Khan*, 40 All. 60, *Muh. Rashid Uddin v. Manik Prasad*, IV U. D. 112 ; *Abu Jafar v. Sat Narain*, I U. D. 246

<sup>3</sup> *Abu Jafar v. Sat Narain*, I U. D. 246 (*obiter*).

<sup>4</sup> *Lachman Prasad v. Ram Tirath Das*, I U. D. 269—24 I. C. 781, *Gaya Prasad v. Abbas Bandi*, A. L. J. (1914) Supplement 21—B. R. 9 of 1914—I U. D. 68—1 O. L. J. 383—25 I. C. 560.

<sup>5</sup> *Rudra Partab v. Ram Baran*, I U. D. 274—24 I. C. 790—1 O. L. J. 248.

<sup>6</sup> *Gaya Prasad v. Abbasi Bandi*, I U. D. 68.

<sup>7</sup> *Bipen Chandra Chatterjee v. Dewan Singh*, VII U. D. (H. C.) 29—7 L. R. Rev. 26—9 R. D. 2—1926 R. C. 31.

<sup>8</sup> *Baij Nath Rai v. Suberna Koer*, 1934 A. L. J. 655—XV U. D. (H. C.) 119.

in a revenue court.<sup>1</sup> A Civil Court cannot grant a declaration that a person who has failed to prove his title as proprietor is entitled to hold it rent-free.<sup>2</sup> There is no limitation for such a suit. A, an inferior proprietor of miscellaneous property and liable to pay a sum of money, Rs. X, to the superior proprietor for revenue and *Malikana* sold part of it to B and reserved the rest for himself, and sued B for distribution of the liability for Rs. X between the two. If the suit could be construed to be for distribution of revenue, the proceedings should be under section 103, Land Revenue Act, but here Rs. X payable to the superior proprietor is of the nature of rent, and as a suit for the distribution of rent is not provided for by the Tenancy Act, the proper forum is the Civil Court.<sup>3</sup>

A person on whom under-proprietary rent has been fixed under section 79 Land Revenue Act cannot sue for a declaration that the proprietors are liable to pay the rent.<sup>4</sup>

The setting up by a person of the under-proprietary right such as can be created under sub-section (2) (b) of this section in a proceeding for ejectment, does not give the landlord a cause of action to sue for a declaration that the person has no such right, for he is not setting up any proprietary rights, and his assertion of such under-proprietary rights is not improper.<sup>5</sup>

Proceedings under this chapter are not confined to the lifetime of the grantee but may be against or by his heirs and successors holding on. The section implies this.<sup>6</sup>

The propriety of an order of a revenue court as to whether the conditions laid down in this section have been satisfied cannot be challenged in a civil court. But if under-proprietary rights have existed from before, either under a settlement decree or under a grant the Civil Court is not debarred from granting a declaration in respect thereof in spite of an order of the revenue court assessing him to rent under section 194.<sup>7</sup>

In a suit for resumption on the allegation that the land was held under a resumable *muafi* the defendant claimed proprietary rights therein but the court declared him to be an under-proprietor only under

<sup>1</sup> *Sham Das v. Bahadur Singh*, 43 A. 325=19 A. L. J. 89=1921 A. I. R. All. 195=IV U. D. 701=2 L. R. Rev. 52=7 R. and Cr. L. J. 78=6 R. D. 295 ; *Gobind Rai v. Banwari Lal*, 42 All. 412=18 A. L. J. 388=IV U. D. 767=6 R. and Cr. L. J. 133=58 I. C. 594=2 U. P. L. R. 93=6 R. D. 358, *Contra*, *Nannhu v. Thakurji Maharaj*, 41 All. 37=16 A. L. J. 881=46 I. C. 764=4 Rev. and Cr. L. J. 230.

<sup>2</sup> *Muh. Abdul Ghafur v. Barber*, 12 A. L. J. 303=25 I. C. 206.

<sup>3</sup> *Sri Ram Lakshman Janki v. Ram Charitter Gir*, XV U. D. 338.

<sup>4</sup> *Mansoor Husain v. Dawar Ali*, XVI U. D. 252.

<sup>5</sup> *Uma Nath Baksh Singh v. Ram Baksh*, XI U. D. (H. C.) 113.

<sup>6</sup> *Bajrang Singh v. Mahpal Singh*, XVII U. D. 218=1936 R. D. 288.

<sup>7</sup> *Shankar Sahai v. Gajadhar Prasad*, 20 O. C. 171 ; *Nadir Singh v. Inder Sen Singh*, 5 O. L. J. 426=5 R. and Cr. L. J. 76=47 I. C. 652.



section 107-H of the Oudh Act. The defendant was held entitled to sue in a civil court for a declaration that he was the proprietor of the land.<sup>1</sup> If on the defence plea in such a suit that defendant was an under-proprietor, the court decreed resumption, the civil courts could not reopen the question and grant a declaration of under-proprietary rights.<sup>2</sup>

As "tenant" does not include an under-proprietor with transferable rights, a suit for proprietary possession against a person entered as such under-proprietor on the ground that he is not so lies only in a civil court.<sup>3</sup>

A declaration in a revenue suit under the section that certain persons are under-proprietors as against the proprietor operates as *resjudicata* in a subsequent suit between the declared under-proprietors *inter se* in which one of them claims to be the sole under-proprietor.<sup>4</sup>

No suit lies under the section for assessment to revenue of land reserved by the vendor to be held rent-free within Exp. I to section 188, where the defendant's proprietary title is not disputed.<sup>5</sup>

Under-proprietary right, *i.e.*, a heritable and transferable right in land liable to pay rent. A *muafidar*, however long his possession, does not become an under-proprietor without a declaration under this section.<sup>6</sup>

Revenue Courts alone have jurisdiction to grant a declaration of the Oudh Act of under-proprietary rights.<sup>7</sup> A obtained such a declaration but being threatened by his opponent with a civil suit, gave up his rights and accepted a *kabuliat* as a compromise. The compromise is invalid, as the threatened suit was prohibited by section 108 (5A) and A remained an under-proprietor.<sup>8</sup>

Where a tenant suing to cancel a notice of enhancement established that he was a tenant holding at a favourable rate of rent, his suit had to be decreed leaving the landlord to proceed under this chapter and then such tenant will be entitled to claim under-proprietary rights.<sup>9</sup>

<sup>1</sup> *Matai Singh v. Ajudhia Singh*, 17 O. C. 86.

<sup>2</sup> *Rup Narain v. Badri Prasad*, 12 O. C. 225, see also *Jai Indar Bahadur Singh v. Bachan Singh*, 5 L. R. Rev. (Oudh) 129.

<sup>3</sup> *Sital Singh v. Lachman Kuar*, 3 O. C. 105.

<sup>4</sup> *Abbas Husain Khan v. Ghulam Husain*, XI U. D. (H. C.) 66=11 L. R. Rev. 22.

<sup>5</sup> *Kunj Behari Singh v. Sheo Dan Singh*, XV U. D. 141=15 L. R. Rev. 432.

<sup>6</sup> *Murli v. Gajraj Singh*, 21 O. C. 124.

<sup>7</sup> *Bishnath Saran v. Umadat*, VI U. D. (H. C.) 255=6 L. R. Rev. (O.) 140=113 O. L. J. 229=94 I. C. 343; *Uma Nath Baksh Singh v. Janki Baksh Singh*, 12 O. L. J. 226=VI U. D. (H. C.) 367=86 I. C. 864.

<sup>8</sup> *Mahmuda v. Shankar Baksh Singh*, 6 O. L. J. 404=53 I. C. 104.

<sup>9</sup> *Deputy Commissioner v. Janki*, XVII U. D. 207=1936 R. D. 259.

The rent assessed under this section becomes payable only from the date of declaration made in the snit.<sup>1</sup>

Rent on under-proprietary rights whether acquired under this section or otherwise can be assessed only under this section, there being no other section for the purpose.<sup>2</sup>

This section does not exhaust the methods in which under-proprietary rights can be acquired and pre-existing under-proprietary rights governed by section 79, Land Revenue Act, are not affected by it.<sup>3</sup>

**193.** If under the provisions of this Chapter revenue or rent has to be determined such revenue or rent shall be determined in accordance with the following provisions, namely.

Rent or revenue how determined.

- (a) the rent of a hereditary tenant shall be determined in accordance with the sanctioned rent-rates applicable to hereditary tenants,
- (b) in fixing revenue, the court shall calculate the rent in accordance with the provisions of clause (a) and shall assess the revenue thereon in accordance with the provisions of Chapter V of the United Provinces Land Revenue Act, 1901,
- (c) in fixing the rent of an under-proprietor, the court shall calculate the revenue in accordance with the provisions of clause (b) and shall add thereto a percentage which shall not be less than ten or greater than fifty.

The section is new in effect. The measure of rent or revenue and the mode of assessing them should be noted.

An assessment of revenue under this section is not a re-assessment, but distribution of the revenue assessed on the mahal. The percentage of revenue to the assets of the particular mahal and not of the settlement officer's circle should be taken into consideration.<sup>4</sup>

The revenue cannot be ordered to be paid direct to Government.<sup>5</sup>

Where an under-proprietor has for a long time been paying rent for land occupied by him, but it was not known how the rent was assessed, the rent must be taken to be under-proprietary rent.<sup>6</sup>

<sup>1</sup> *Partap Bahadur Singh v. Bajrang Bali Singh*, 11 O. C. 187.

<sup>2</sup> *Jagat Narain v. Seshman Prasad*, XII U. D. 39—12 L. R. Rev. 26.

<sup>3</sup> *Shankar Sahai v. Gajadhar Prasad*, 20 O. C. 171—4 O. L. J. 409 ; *Jagat Narain v. Seshman Prasad*, XII U. D. 30.

<sup>4</sup> *Sangam Lal v. Shyam Sunderlal*, II U. D. 251—3 R. and Cr. L. J. 129. See also *Sher Bahadur Singh v. Partab Bahadur Singh*, IV U. D. 129.

<sup>5</sup> *Kesho Prasad Singh v. Ganga*, IV U. D. 386.

<sup>6</sup> *Bhagwan Baksh Singh v. Bhagwati Din*, VI U. D. (H. C.) 542—6 L. R. Rev. (O.) 99—1925 R. D. 172.

**194.** Subject to the provisions of sections 191 and 192, rent may be fixed on all rent-free grants and the  
 Liability of grant to fixation of rent or to enhancement. rent of all grants held at a favourable rate of rent may be enhanced.

1. The section corresponds to section 187 of the Agra Act of 1926 and to section 107-G (1) of the Oudh Act.

Section 187 of the Act of 1926 corresponded to section 156 of Act II of 1901.

2. If a suit for resumption can be brought under this chapter, a civil suit will not lie.<sup>1</sup>

Assessment of rent under the section does not take away the jurisdiction of a civil court to grant a declaration of under-proprietary rights where they existed before the date of the suit to resume or to have rent assessed but not where no such under-proprietary rights existed before such date.<sup>2</sup>

The dismissal of a suit for resumption, there being no alternative prayer for enhancement of rent, did not bar a subsequent suit for enhancement of rent under the resumption chapter.<sup>3</sup>

In Oudh, it was held that assessment of rent could be made on an under-proprietary tenure.<sup>4</sup>

The dismissal of a suit for resumption does not bar a suit under section 194.<sup>5</sup> A suit under section 194 will lie only if plaintiff is proprietor of a *khata k'war* or the *kh'wani* of which comprises the land in respect of which the suit is brought, and not where the defendant's *muani* has nothing to do with plaintiff's *muhal* or portion of the *muhal*.<sup>6</sup>

A suit for assessment to rent by some of the co-sharers in a joint holding, is not to be encouraged.<sup>7</sup> A deity rent-free grantee cannot be sued for fixation of rent, as it can never be a tenant. The person put in possession to cultivate by the manager of the deity is therefore a tenant-in-chief and not a sub-tenant.<sup>8</sup>

Under the Oudh Act, it was held that a thekadar holding at a favourable rate of rent could have his rent enhanced under the section.<sup>9</sup>

3. **Suit.**—The suit under section 194 falls in Group B No. 21 of the Fourth Schedule. Court-fee is payable on the annual lotting value of the

<sup>1</sup> *Tika v. Khudayar*, 7 All 191; *Puran Mal v. Tika*, 2 All. 732

<sup>2</sup> *Shankar Sahai v. Gajadhar Prasad*, 20 O. C. 171—4 O. L. J. 409—40 I. C. 200.

<sup>3</sup> *Gulzaran v. Chandrar Khan Singh*, 3 R. and Cr. L. J. 20; *Court of Wards v. Badri Prasad*, 5 L. R. Rev. (O.) 101.

<sup>4</sup> *Kedar Nath v. Suraj Narain*, IV U. D. 357.

<sup>5</sup> *Udai Ram v. Court of Wards*, I U. D. 408—29 I. C. 678.

<sup>6</sup> *Sri Ram Chander Naik Kalya v. Satya Narain*, 11 L. R. Rev. 198—XI U. D. (H. C.) 246.

<sup>7</sup> *Muhammad Baqar v. Sheo Mohan Singh*, I U. D. 338—2 O. L. J. 88—72 I. C. 974.

<sup>8</sup> *Khachera v. Sri Thakur Radhe Nrit Beharijt*, XIII U. D. 199—14 L. R. Rev. 386.

<sup>9</sup> *Partab v. Deputy Commissioner*, 41 All. 541—5 O. L. J. 433.

land as estimated by the plaintiff. There is no limitation. The suit is triable by an Assistant Collector of the first class with a right of appeal as in Chapter X of the Land Revenue Act.

It corresponds to a suit provided for by section 108 (5A) of the Oudh Rent Act.

**195.** Except in a case in which the grantee becomes a proprietor or an under-proprietor under the provisions of section 192, a grantee may be ejected from his grant in all cases in which rent may be fixed thereon or the rent thereof enhanced if, by the terms of the grant or by local custom, it is held—

- (a) at the pleasure of the grantor ; or
- (b) for the purpose of some specific service, religious or secular, which the landlord no longer requires ; or
- (c) conditionally or for a term, when the condition has been broken or the term has expired.

1. The section corresponds in effect to section 188(1) and (2) of the Agra Act of 1926 and corresponds to section 107-E of the Oudh Act, omitting the last paragraph.

Section 188, sub-section (1) of the Act of 1926 reproduced section 154 (1) of the Act of 1901.

2. **If, etc., etc.**—The conditions under which resumption is allowed are confined by the three clauses mentioned in this section.<sup>1</sup> A local custom must be proved by reliable evidence, generally the *wajib ul-arz*.

A perpetual rent free grant without or with consideration, to which no service or condition is attached, cannot be resumed though it may be liable to pay revenue or rent. Dedication of land rent-free to a temple or other religious institution will not exempt the land from resumption, if the terms of the section are complied with.<sup>2</sup>

3. **Clause (a) At the pleasure of the grantor.**—Whether a grant is resumable at the pleasure of the grantor depends on its terms. Since land for which no rent is payable is presumed to be held under a rent-free grant, to which sections 191 to 194 might apply, the *onus* of proving that it was held at his pleasure lies on the grantor or his successor in interest.<sup>3</sup> The terms of the grant must be proved by evidence, documentary or oral. The *wajib-ul-arz* is often the only piece of reliable evidence. An entry in it is not conclusive evidence, and its value as evidence of the truth of the entries contained therein varies.

<sup>1</sup> *Lachman Singh v. Raghunath Singh*, II U. D. 230.

<sup>2</sup> *Janki Prasad v. Chunni Lal*, III U. D. 186=II U. D. 164=3 R. D. 57=4 R. D. 32.

<sup>3</sup> *Janki Prasad v. Chunni Lal*, III U. D. 186 ; *Ala Bux v. Radhe Lal*, I U. D. 36 ; *Narain Das v. Mir Khan*, I U. D. 321=29 I. C. 61.

If it was prepared strictly in accordance with the rules prevalent at the time, it is evidence of the highest value ; but if an entry is merely the statement of the sole proprietor or proprietors, the other side affected thereby being no parties, its value varies according to circumstances. If it records a contemporaneous fact, and has been repeated in substantially the same terms in subsequent *wajib-ul-arzes*, one would not go wrong in relying on it : but if the various *wajib-ul-arzes* differ in substance, or the entry does not record a fact which came into existence at or about that time, one may safely ask for some corroborative evidence as to the truth of the fact stated in an entry.

Where the settlement officer in 1872 did not ascertain a village custom as to resumability, as he was under the rules bound to do before entering it, but merely recorded the statement of the mukhtar of the zamindar or of the zamindar that the latter had power to take away all *muafi* at his pleasure, the statement is not sufficient to prove the custom, although there is no evidence that the *muafi* had been granted before 1872.<sup>1</sup> So if such statement was not signed by the *muafidar*.<sup>2</sup> Where a *muafi* existed before 1833 and the statement of the zamindar recorded in the *wajib-ul-arz* of that year was to the effect that he could not resume it during the term of the settlement, and at the next settlement of 1872, the zamindar had it recorded that when he wanted to resume he would apply for assessment of rent to the Collector, the custom of resumability at pleasure is not sufficiently proved.<sup>3</sup> This is much more so, when there is documentary evidence of a date anterior to the earliest *wajib-ul-arz* entry that it was not resumable.<sup>4</sup>

The following expressions used in connection with rent-free grants or lands do not show that a grant was resumable at the pleasure of the grantor :—*muafi khairati* ;<sup>5</sup> *ba ruzamandi malikan* ;<sup>6</sup> *Shankalap*.<sup>7</sup>

<sup>1</sup> *Ala Buz v. Radhey Lal*, I U. D. 36=39 I. C. 805 ; *Nisarul Rahman v. Tikam Das*, I U. D. 228=26 I. C. 869=1 O. L. J. 680 ; *Dukh Haran v. Pirthi Pal*, 3 Rev. L. J. 103 ; *Bhairon v. Shankar Sahai*, I U. D. 283=30 I. C. 208 ; *Narain Das v. Mir Khan*, I U. D. 321=29 I. C. 61 ; *Ganesh Prasad v. Sheo Dayal*, II U. D. 642=2 O. L. J. 370=30 I. C. 392 ; *Wasi Ali v. Sahebunnisa*, II U. D. 541 ; *Har Prasad v. Ram Partab Singh*, II U. D. 436 ; but see *Gopal v. Collector*, 1927 A. I. R. All. 232=VII U. D. (H. C.) 207=7 L. R. Rev. 340=1926 R. C. 409=92 I. C. 134=10 R. D. 320.

<sup>2</sup> *Ganesh Prasad v. Sheo Dayal*, II U. D. 642=2 O. L. J. 370=30 I. C. 392 ; *Gopal v. Collector*, VII U. D. (H. C.) 207=7 L. R. Rev. 340=10 R. D. 320, where the judge differed as to whether an entry in a *wajib-ul-arz* was an entry of custom.

<sup>3</sup> *Janki Prasad v. Lokender Shah*, I U. D. 25=31 I. C. 898.

<sup>4</sup> *Raushan Zaman v. Rama Nand*, I U. D. 287.

<sup>5</sup> *Nisarul Rahman v. Tikam Das*, I U. D. 228 ; *Janki Prasad v. Lokender Shah*, I U. D. 25=31 I. C. 898.

<sup>6</sup> *Dwarka v. Bunke Behari Lal*, II U. D. 399.

<sup>7</sup> *Har Prasad v. Ram Partab Singh*, II U. D. 436.

4 **Clause (b).—Service grants.** The *onus* of proving that a grant was for service, is on the proprietors,<sup>1</sup> specially if the *muafi* is of old standing and there is no evidence that any service was ever performed.<sup>2</sup>

The service which is contemplated by clause (b) is some service for the benefit of the grantor<sup>3</sup> and which he has the right to dispense with. For instance a grant rent-free to a priest for performing religious services in a temple is not such service. A grant to a temple or idol is not usually a service grant as no specific religious service which the grantor requires and may dispense with is attached to it,<sup>4</sup> but the terms may impose such service,<sup>5</sup> in which case clause (b) will apply.

Where the rent of a person's holding was remitted in virtue of his service to a *dargah* enshrining a footstep of the Prophet, the land was said to have been held rent-free for the performance of a religious service.<sup>6</sup>

Where the terms of a grant were that the grantee was to hold a certain area of land rent-free for the purpose of the performance of worship of an idol, and to remain in possession so long as he performed such worship, and that if he failed to perform it, the grantee was at liberty to hand over the land to some one else, so that the worship may be performed, it is not a grant to be held at the pleasure of the grantor, for he could never have contemplated resumption, nor for performance of services which the grantor could dispense with, for he contemplated perpetual performance of worship, but is a grant held conditionally, *viz.*, so long as the grantee performed the worship.<sup>7</sup>

If a grant is for the benefit of a temple but without any dedication of the land or its income to the deity, it must have been to some sentient person, and sections 195 and 192 apply and (under the old Act) if there have been two or more successors to the original Mahant extending over a period of 50 years, proprietary rights have been acquired by the Mahant.<sup>8</sup>

A grant *muafi khairati* is not resumable.<sup>9</sup> A *Dohli* or *punarth* tenure *muafi* is a charitable not a service *muafi*.<sup>10</sup>

<sup>1</sup> *Janki Prasad v. Chunni Lal*, III U. D. 186.

<sup>2</sup> *Sheo Sampat Singh v. Gaya Prasad*, 1926 R. C. 43=7 L. R. Rev. 96=12 R. and Cr. L. J. 98=VII U. D. 76=10 R. D. 435

<sup>3</sup> *Nilmoney Singh v. Government*, 18 W. R. 321 ; *Puranmal v. Padma*, 2 All. 732.

<sup>4</sup> *Ram Phul Singh v. Jankibar Saran Singh*, 2 O. C. 295 ; *Sheo Raj Singh v. Nathu Singh*, B. R. 3 of 1911.

<sup>5</sup> *Ram Partab v. Bhagwati Prasad*, II U. D. 277.

<sup>6</sup> *Manzur Ali Shah v. Babu Ram*, XVI U. D. 67.

<sup>7</sup> *Sukhrampuri v. Muh. Ashfaq*, 1930 A. I. R. All. 291=1930 A. L. J. 641=126 I. C. 229=14 R. D. 274, reversing in L. P. A. the decision in 1927 A. I. R. All. 779=VIII U. D. (H. C.) 166=103 I. C. 424=8 L. R. Rev. 167=1927 R. C. 38.

<sup>8</sup> *Bharat Das v. Nandrani*, 39 All. 689=15 A. L. J. 769=42 I. C. 818.

<sup>9</sup> *Janki Prasad v. Lokender*, I U. D. 25=31 I. C. 898 ; *Nisarul Rahman v. Tikam Das*, I U. D. 228.

<sup>10</sup> *Sarju v. Tota*, II U. D. 166 ; *Janki Prasad v. Chunni Lal*, III U. D. 186.

Charitable grants are irresumable,<sup>1</sup> unless a custom is proved. Such a grant in favour of a deity is probably in the same position.<sup>2</sup> If the plaintiff alleges a grant to be charitable, but the defendant says it is a service grant, the latter is bound by his pleading and the tenure is resumable.<sup>3</sup>

A declaration in 1869 that land was liable to have rent assessed, not followed by assessment of rent, does not bar a suit for resumption of a service tenure.<sup>4</sup>

The specific service must be alleged in the plaint.<sup>5</sup>

And in the plaint the specific service, no longer required, should be mentioned.<sup>6</sup>

Filing of a suit is now sufficient notice for clause (b), but absence of notice affects costs.

The mere fact that the grantee is a *bari* whose traditional occupation is furnishing of leaves does not prove that the grant was for some specific service.<sup>7</sup>

Where the holder of land held rent-free is a barber and the holding is entered as *haqulkhidmat*, it may be resumed under clause (b).<sup>8</sup>

Where 13 years were allowed to pass after an order of resumption without resumption, that order cannot be given effect to.<sup>9</sup>

A grant of a *bagh bila lagani* does not mean a resumable grant on the cesser of the grove.<sup>10</sup>

Once a service grant has been allowed by the zamindar to be transferred, it cannot be resumed.<sup>11</sup>

<sup>1</sup> *Ib.* ; *Janki Prasad v. Chunni Lal*, III U. D. 186—II U. D. 164.

<sup>2</sup> *Khacheru v. Sri Thakur Radhe Nrit Behoriji*, XIII U. D. 199.

<sup>3</sup> *Yasin Ali Khan v. Shubrati*, II U. D. 280.

<sup>4</sup> *Ram Charan v. Bismilla*. I U. D. 35—29 I. C. 5 ; *Idai Ram v. Court of Wards*, 29 I. C. 678.

<sup>5</sup> *Murlu v. Raja Ram*, 29 I. C. 554—I U. D. 194—1 Rev. and Cr. L. J. 26 ; *Muh. Ali Muh. Khan v. Shaukat Ali*, II U. D. 604—34 I. C. 713—3 O. L. J. 231—III U. D. 33 ; *Janki Prasad v. Chunni Lal*, III U. D. 186 ; *Sarju v. Tota*, II U. D. 166—3 R. D. 46, and proved or a suit for resumption will fail, *Inayatullah v. Kedar Nath*, XIV U. D. 84—14 L. R. Rev. 313

<sup>6</sup> See *Bhajju v. Gopal Singh*, 33 I. C. 772—I U. D. 368—1 Rev. and Cr. L. J. 92 ; *Maharaja of Bulrampur v. Pirthipol*, I U. D. 396—1 Rev. and Cr. L. J. 28 ; *Sarju v. Tota*, II U. D. 166 ; *Iqtidarullah Khan v. Baldeo*, III U. D. 264.

<sup>7</sup> *Bangi v. Court of Wards*, III U. D. 416—2 U. P. L. R. (B. R.) 157—4 R. D. 230.

<sup>8</sup> *Midai v. Kalyan*, V U. D. 409—1922 R. C. 581.

<sup>9</sup> *Parmatma v. Lachman*, I U. D. 160. *Contra*, *Dattu v. Kuar Bahadur*, II U. D. 276.

<sup>10</sup> *Court of Wards v. Kesho Prasad Singh*, I U. D. 98.

<sup>11</sup> *Ganesh Prasad v. Rambharose*, 2 Rev. and Cr. L. J. 43—II U. D. 524.

Ordinarily a service grant is intransferable,<sup>1</sup> unless by its terms it is otherwise.<sup>2</sup>

A snit based on clause (b) may be decreed for the reason in clause (c) that a condition of the grant has been broken.<sup>3</sup>

5. **Clause (c).**—Land granted rent-free on a condition is not resumable under this section unless and until the condition is broken, *vide* section 196 (c). A sale to a Hindu of a grant made for the upkeep of an *imambara*, is violation of the condition of the grant.<sup>4</sup>

See *Sukhrum Puri v. Muhammad Ashfaq*,<sup>5</sup> cited in note 4 at p. 633 *supra*.

A grant for the term of the life of the grantee terminates on his death, and continuance in possession of his heirs will not be under the original grantee's title,<sup>6</sup> but if this continuance goes on for two or three generations of his, section 192 was held to apply.<sup>7</sup>

Where land was granted for building purposes, and the houses fell down and the site was brought under cultivation, it became resumable.<sup>8</sup>

Where land was granted rent-free to plant a grove if the grantee started an *abadi* and sunk a well and he did the last two but planted a grove in a sketchy and dilatory manner and also began cultivation in the grove and encroached on land not included in the grant and the last two were made the grounds for a suit for resumption, it was held that neither constituted a breach of the condition of the grant.<sup>9</sup>

6. **Transfer.**—Section 33 not being applicable, land held rent-free is transferable,<sup>10</sup> but this chapter, outside the cases falling under section 192, makes the position of the transferee precarious, as the grant may be resumed or the holder may be declared to be a tenant. A transferee, not being one with the consent of the proprietor, has no indefeasible title.<sup>11</sup> It was also held that in a suit for resumption the transferee is not a necessary party.<sup>12</sup> This is much more so when the grant is by its terms intransferable, though it may be hereditary,<sup>13</sup> as in the case of a grant in

<sup>1</sup> *Girdhar Gopal v. Gaya Prasad*, 2 Rev and Cr. L. J. 187—II U. D. 525; dissenting from 25 I. C. 594.

<sup>2</sup> *Budhu v. Maharaja of Benares*, II U. D. 383.

<sup>3</sup> *Jiva Ram v. Moonga Ram*, XX U. D. 225—1939 R. D. 242.

<sup>4</sup> *Jaidai v. Muh. Ali*, II U. D. 515.

<sup>5</sup> 1930 A. L. J. 641.

<sup>6</sup> *Fazal Husain v. Ashraf Husain*, 3 O. C. 43.

<sup>7</sup> *Wasi Ali v. Sahib un nissa*, II U. D. 541.

<sup>8</sup> *Munna Lal v. Ilahi Buz*, II U. D. 16.

<sup>9</sup> *Jagan Nath v. Dep. Com.*, II U. D. 17.

<sup>10</sup> *Bismilla v. Sher Ali Khan*, 14 L. R. Rev. 722—XIV U. D. 383.

<sup>11</sup> 6 O. C. 111; *Kushar Das v. Balbhaddar Singh*, 4 O. W. N. 1269; *Dasrath v. Sandala*, 13 O. L. J. 499—93 I. C. 910; *Contra, Bhairon v. Balak*, 9 O. L. J. 331—68 I. C. 558.

<sup>12</sup> 6 O. C. 111

<sup>13</sup> *Manasa Din v. Thakur Prasad*, 2 O. L. J. 10—27 I. C. 585.



lieu of service.<sup>1</sup> In *Suraj Baksh Singh v. Baldeo Behari*<sup>2</sup> it was ruled that *Muafidar* could not transfer his *muafi*. This is going too far. A transferee of a rent-free grant land, which is not expressly intransferable, is not a trespasser liable to action under section 180.<sup>3</sup> This view is opposed to that in the following case.

Before clause 5-A had been added on the first of January, 1902 to section 108 of the Oudh Act, A had obtained a Civil Court declaration that land held rent-free by B was liable to resumption. A suit for possession by A after the first of January, 1902, of the land held rent-free is one for resumption.<sup>4</sup>

In another case<sup>5</sup> an ancient grant from before 1840 was held on the evidence to be a service grant and hence to fall under sections 188 and 190 of the Act of 1926. A mortgage had been made by the grantee in 1893. It was held that the mortgage was invalid and the mortgagee or his transferee was a person amenable to section 180.

A suit by the proprietor of a mahal for a declaration that a transfer of *muafi* rights in a plot is not binding on him and for possession of the land is in effect a suit for resumption.<sup>6</sup>

7. Where a tenant holds at a favourable rate of rent, but not under a special agreement or decree of court, and there is nothing in his patta to exclude him from the provisions of this chapter, the proper procedure to eject him is to sue for resumption and not for ejectment.<sup>7</sup>

The revenue court hearing a case for resumption has jurisdiction to try an issue which it would be necessary for it to decide in order to take cognisance of it, *e. g.*, whether or not the subject-matter of resumption retained the character of a grove, and its finding thereon will not be open to challenge in a civil court.<sup>8</sup>

8. The section does away with the force of the ruling in *Husain Baksh v. Zainab Bibi*,<sup>9</sup> which had ruled that an order for ejectment formed no part of the order under section 30 of Act XII of 1881 (corresponding to the present section).

9 **Suit.**—A suit for resumption comes under Group B (No. 22) of the Fourth Schedule. It is cognisable by an Assistant Collector of the first class, with a right of appeal as provided by Chapter X of the Land Revenue Act. The Court-fee is assessed on the annual letting value of

<sup>1</sup> *Girdhar Gopal v. Gaya Prasad*, 3 O. L. J. 325=34 I. C. 672, dissenting from *Ghulam Sarwar v. Muh. Ambar Ali Khan*, 1 O. L. J. 325=25 I. C. 595=I. U. D. 382.

<sup>2</sup> I. U. P. L. R. (J. C.) 83=53 I. C. 459=22 O. C. 186.

<sup>3</sup> *Bismilla v. Sher Ali Khan*, 14 L. R. Rev. 722=XIV U. D. 383.

<sup>4</sup> *Dwarka Prasad v. Chunder Koor*, 6 O. C. 383.

<sup>5</sup> *Baj Nath Rai v. Suberna Kuer*, 1934 A. L. J. 655=XV U. D. (H. C.) 118.

<sup>6</sup> *Gopi Charan v. Durga Prasad*, 8 O. L. J. 472=65 I. C. 702.

<sup>7</sup> *Udit Narain Singh v. Raghubar*, VIII U. D. 77=1927 R. C. 354.

<sup>8</sup> *Sheo Sagar v. Lachhman*, 1929 A. I. R. Oudh 60=4 Lakh. 234=X U. D. (H. C.) 194, 304=10 L. R. Rev. 220=12 R. D. 742=5 O. W. N. 1085=116 I. C. 756.

<sup>9</sup> B. R. 19 of 1893=14 A. W. N. 92.

the land as estimated by the plaintiff. Limitation is 12 years from one of the dates mentioned in section 196.

It is cognisable by Revenue Courts exclusively. The Court can decide whether the land is *muafi* or not.<sup>1</sup>

**Parties.**—A mortgagee of the grantee is not a necessary party and is bound by the decision if the suit was fairly conducted<sup>2</sup>; but if not so conducted and the mortgagor impleads him he has a right to be heard<sup>3</sup> and to appeal.<sup>4</sup>

10. Without resumption under this chapter, a proprietor cannot take possession of a rent-free grant land, *e. g.*, forcibly.<sup>5</sup> Section 183, which has been made applicable to rent-free grantees by section 198, provides the remedy for wrongful dispossession.

**196.** (1) The liability to fixation or enhancement of rent under section 194 and to ejectment under section 195 arises—  
 Date from which liability to fixation or enhancement of rent or to ejectment arises.

- (a) where the land is held under a written instrument by which the grantor has expressly agreed that it shall not be resumed on the death of the original grantor, or on the expiration of the settlement in force at the date of the grant, or on the expiry of a period of thirty years from the date of the grant whichever event first occurs;
- (b) where the land is held for the purpose of some specific service, religious or secular, when the service is no longer required;
- (c) where the land is held conditionally or for a term, when the condition has been broken or the term expires, or on the expiry of eleven years from the date of the grant, whichever event first occurs;
- (d) in any other case, on the expiry of five years from the date of the grant

(2) In the case of a grant falling under clause (b) of subsection (1) the filing of a suit for fixation or enhancement of rent or for ejectment shall be deemed sufficient notice that the service is no longer required; but where no previous notice in writing has been given to the grantee, the court may, in its discretion, award cost to the defendant.

<sup>1</sup> *Tika Ram v. Khudayar Khan*, 7 All 191—4 A. W. N. 331. See *Ajodhia Prasad v. Sheodin*, 6 All. 403—4 A. W. N. 75.

<sup>2</sup> *Gaya Prasad v. Tasadduk Husain*, 6 O. C. 110.

<sup>3</sup> *Madari Lal v. Pahalwan Singh*, 2 O L J. 161—28 I. C. I U. D. 285.

<sup>4</sup> *Raj Dulare v. Durga Prasad*, III U. D. 232.

<sup>5</sup> *Ambika Prasad v. Jag Prasad*, 36 I. O. 958 (A), 3 Rev. and Cr. L. J. 35.

1. Sub-section (1) of this section reproduces in effect section 189 and sub-section (2) section 188 (2) of the Act of 1926. In sub-section (1) eleven has been substituted for seven and five for one.

Clause (a) reproduced in effect the proviso to section 151 and clauses (f) and (g) reproduced in effect sub-section (2) of section 154 of Act II of 1901.

2. Where the zamindar holds himself liable for revenue of land held by another, it becomes resumable as under clause (a)<sup>1</sup>

Under clause (b) limitation will begin from the date the landlord notifies that the service is no longer required.<sup>2</sup>

3 **Expiration of the settlement in force.**—Where the number of years, say 40, for which a settlement is made, has expired and the next settlement comes into operation, say, 5 years later, is the old settlement in force up to the coming into operation of the new settlement? Or is the interval a period of *interregnum*? The Land Revenue Act, except for the limited purpose indicated in section 95, does not throw any light. In a case from Oudh section 107-B, proviso, which is similar to section 196 (1) (a) of this Act, it was held that the old settlement remained in force until the coming into operation of the new settlement, and if it was intended to set up that the old settlement ceased to be in force at the end of its term of, say, 40 years, the point should be set out in the pleadings.<sup>3</sup>

**197.** If, under the provisions of this Chapter, rent is fixed on a rent-free grant, or the rent of a grant of tenure and of amount held at a favourable rate of rent is enhanced of rent payable under the provisions of section 194, the grantee shall become a hereditary tenant from the date of the decree fixing or enhancing the rent.

The section corresponds in some respects to section 190 of the Agra Act of 1926 and section 107-G (2) of the Oudh Act. Instead of a statutory or occupancy tenant, the grantee will become a hereditary tenant.

**198.** The provisions of section 65, section 68, section 70, Application of certain sections 72 to 80, section 157, section 159, sections to grantees. section 160, section 162, sections 181 to 183 and sections 185 and 186 shall apply to rent-free grantees and to grantees holding at a favourable rate of rent as they apply to hereditary tenants.

The section corresponds to section 191 of the Agra Act of 1926 which corresponded to section 155 of the Act of 1901. Section 183 refers to remedies for wrongful ejectment; section 185 to joinder of defendants and sections 65, 68, 70, 72 to 80 deal with the right to make improvement and to claim compensation for it and the measure

<sup>1</sup> *Sujan v. Jagrani*, 7 L. R. Rev. 207=VII U. D. 25=1926 R. C 256=10 R. D. 21.

<sup>2</sup> *Alopi Datta v. Radhey Shyam*, 1940 R. D 134.

<sup>3</sup> *Baba Ram Das v. Special Manager, Court of Wards*, B. R. 5 of 1931=13 L. R. Rev. 134.

of such compensation. Sections 157, 159 refer to conditions for ejectment. Sections 181 and 182 refer to enforcement of ejectment and 160 to the right to crops on ejectment. Section 180 does not apply, section 183 does, so that if wrongfully dispossessed a suit for recovery of possession under the section may be brought. Section 186 refers to reinstatement of tenant wrongfully dispossessed. Section 185 shows what persons may be joined as defendants in such suit. Section 162 protects from ejectment from residential houses.

**199.** The provisions of section 69 and of Chapter VII and of clauses (a), (b), (d), and (e) of section 236 and of sections 237 to 240 shall apply to grantees holding at a favourable rate of rent as they apply to tenants, except that the provisions of section 148 shall apply only in so far as they refer to recovery of an arrear of rent by suit.

This section is new and shows which of the sections relating to tenants apply to grantees holding at favourable rates of rent. Section 69 relates to the payment of full rent by a tenant making an improvement or erecting a building or buildings or planting trees. Chapter VII relates to the payment and recovery of rent and Chapter XIII (which contains sections 235 to 240 to compensation and penalties in certain cases. Section 148 applies only so far as the remedy to recover arrear of rent by suit is concerned.

**200.** The interest of a rent-free grantee or a grantee holding at a favourable rate of rent shall be extinguished—

- (a) when he dies, leaving no heir entitled to succeed him,
- (b) when, in accordance with the provisions of this Chapter, he becomes a proprietor, an under-proprietor or a hereditary tenant, or when he is ejected,
- (c) when his holding is acquired under the provisions of the Land Acquisition Act, 1894,
- (d) by merger,
- (e) when he has lost possession of his holding and the right to recover possession is barred by limitation,
- (f) when he surrenders his holding under the provisions of section 82, which shall *mutatis mutandis* apply to him, as if he were a tenant.

This section is new and is similar to section 45. Cl. (a) is obvious. Clause (b) extinguishes the smaller interest of a rent-free grantee or a grantee holding at a favourable rate of rent on the acquisition of the higher rights of proprietor, under-proprietor or hereditary tenants (as under section 197). Ejectment is provided for by section 195 and also ends such interest. Clause (c) is the same as clause (d) of section 45, and clause (d) shows that merger also ends such interest

and is similar to clause (e) of section 45. Clause (e) is the same as clause (f) of section 45. The rule of surrender as enunciated in section 82 also applies and ends such interest.

**201.** Suits under this Chapter shall, when the local area in which the land is situated is under settlement, be instituted in the court of the settlement officer or assistant settlement officer, who shall have powers to hear and dispose of cases under this Chapter.

The section reproduces in effect section 193 of the Act of 1926 and corresponds to section 107-C of the Oudh Act

**202.** Appeals from decrees or orders passed under the provisions of sections 198 and 199 shall be governed by the provisions of Chapter XIV and appeals from other decrees or orders passed under this Chapter shall, notwithstanding anything in Chapter XIV, be governed by the provisions of Chapter X of the United Provinces Land Revenue Act, 1901.

The section reproduces in effect section 195 of the Act of 1926 and corresponds to section 107-K of the Oudh Act. The exception made as to suits under sections 198 and 199 should be noted.

No appeal lies to the civil courts.<sup>1</sup>

The latter part of the section indicates the court of appeal but not the procedure. Section 201 L. R. Act does not regulate cases under this chapter and an appeal lies from an *ex parte* decree.<sup>2</sup>

**203.** Nothing in this Chapter shall affect the right of the Provincial Government to assess revenue on any land in accordance with section 58 or section 103 of the United Provinces Land Revenue Act, III of 1901.

This section is new and saves the right of Government to assess revenue.

Where in a suit under section 144 of the Act of 1926 the plaintiff applied for proceedings to be taken under the Resumption Chapter and the trial court agreed and decided that the land was liable to have rent fixed on it but only by a fresh suit an appeal was held to lie to the Collector under section 195 of the Act of 1926 and not to the Commissioner.<sup>3</sup>

<sup>1</sup> Overriding *Mahabal Rai v. Damodar Das*, 15 A. L. J. 200 and numerous court other cases

<sup>2</sup> *Sheo Narain v. Drisgibjai Singh*, III U. D. 333.

<sup>3</sup> *Har Prasad v. Sada Nand*, XVI U. D. 534.

## CHAPTER X

## GROVE-HOLDERS

**204.** In this Chapter the word "landlord" includes an under-proprietor, a permanent lessee and a permanent tenure-holder.

Application of this Chapter to under-proprietors.

This is new. In section 196 of the Act of 1926 a permanent tenure-holder could grant permission to plant a grove. Now, a permanent lessee as defined in section 3(15) and an under-proprietor are added to persons who may grant such permission and to whom the chapter applies.

Definition of grove-holder. **205.** A person who has planted a grove—

(a) on land which was let or granted to him by a landlord, for the purpose of planting a grove ;

(b) with the written permission of the landlord, or in accordance with local custom entitling him to do so, on land which he held as a tenant other than as a sub-tenant, a permanent tenure-holder, or a fixed-rate tenant, or a tenant holding on special terms in Oudh or an occupancy tenant in Oudh ;

shall be the grove-holder of such grove :

Provided that where the permission was granted in Agra before the 7th day of September, 1926, and in Oudh prior to the commencement of this Act, the permission need not have been in writing and may have been either express or implied.

1. This reproduces in effect section 196 of the Act of 1926 with such changes in language as to make it applicable to Oudh also. The words "not being a grantee to whom the provisions of section 185 or section 186 apply" have been dropped. Sections 185 and 186 are now sections 191, 192 and indicate cases in which a suit under the Chapter is barred and in which the rent-free grantee is deemed to hold in proprietary right.

See section 3 (6) for definition of grove. The chapter relates to what are called tenants' or ryots' groves, and not to groves belonging to landlords or proprietors which remain subject to the ordinary law.

2. Note that the only persons who can grant or let land for planting a grove are landlords, under-proprietors, permanent lessees and permanent tenure-holders. If a grove was planted by a zamindar, the person who occupies it under him is not a groveholder, but a tenant of the grove, and if he cultivates the land under the trees he does so as a tenant.<sup>1</sup> A grove on the zamindar's *khudkashi* land is in the absence of positive evidence of having been planted by its tenants, presumed to be the zamindar's grove.<sup>2</sup>

<sup>1</sup> *Gulzari Lal v. Kanhai*, II U. D. 14.

<sup>2</sup> *Mohan Malik v. Muhammad Ihsanullah Khan*, XVIII U. D. 202.

A grove planted by the tenant, *A*, of a *sir* plot and of which the zamindar took possession on the death of the tenant was held to be a zamindar's grove, although another person *B* was recorded as in possession of the *sir* in a suit brought by a temple to which *B* had gifted the property against *C* who had been recorded as grove-holder by the Commissioner, *C*'s father having been recorded as *shikmi* after *B*.<sup>1</sup>

3. The section contemplates three cases, *viz.* (*a*) a tenant who has planted a grove in accordance with a local custom entitling him to do so, (*b*) a tenant who has planted a grove with the written permission of the landlord or the permanent lessee, or the under-proprietor or the permanent tenure-holder, and (*c*) a person to whom land has been granted or let by a landlord or under-proprietor or permanent lessee or permanent tenure-holder for the purpose of planting a grove. In cases (*a*) and (*b*), the tenant who has planted a grove must not have been a permanent tenure-holder or a fixed-rate tenant or a sub-tenant, and in Oudh an occupancy tenant or a holding on special terms. Persons allowed by the Mahant of a Math to plant trees are grove-holders.<sup>2</sup>

Though a tenant of *sir*-land is called a *shikmi* like a sub-tenant, he is not a sub-tenant, but a non-occupancy tenant. He may plant a grove on the *sir*-land held by him with the consent of his landlord and be a grove-holder.<sup>3</sup>

It was held that *sir* did not lose its character as such because the zamindar had planted a grove thereon,<sup>4</sup> with the result that on sale of his proprietary rights he became the exproprietary tenant of the land.<sup>5</sup>

On a sale of proprietary rights the groves also pass to the purchaser unless specifically excluded and the vendor will have no right as a grove-holder.<sup>6</sup>

When the grove ceases to be grove, what will be the status of the expropriator? Will he be treated as a hereditary tenant under section 206 *a*)? Reading the definition, it will be apparent that as he planted the grove as proprietor and not as tenant, he never was a grove-holder, and hence clauses (*a*) and (*b*) of section 206 do not affect him. He can scarcely be said to have become a grove-holder to attract clause (*g*) of section 206, as a grove-holder is a tenant who as such has planted a

<sup>1</sup> *Ram Chandra v. Thakur Gopal Lalji*, 1938 A. L. J. (B. R.) 58.

<sup>2</sup> *Math Sri Gorakh Nath v. Swami Nath Lal*, XIX U. D. 212=1938 R. D. 623.

<sup>3</sup> *Ram Dihal Lal v. Durga Prasad*, 14 L. R. Rev. 89=XIV U. D. 33.

<sup>4</sup> *Shyam Lal v. Anant Ram*, 17 I. C. 302; *Harbans v. Harbans*, 1930 A. L. J. 248=1930 A. I. R. All. 655=XI U. D. (H. C.) 260=11 L. R. Rev. 236, affirming 10 L. R. Rev. 262=X U. D. (H. C.) 204=113 I. C. 286; *Hari Ram v. Khuda Baksh*, IV U. D. 670=5 R. D. 75=3 L. R. Rev. 121; *Ilahi Khan v. Baij Nath*, II U. D. 413; *Lachmi Narain v. Jai Kishan*, III U. D. 159=4 R. D. 8, but see *Bhagwan Din v. Puri Lal*, 42 All. 483=18 A. L. J. 570=58 I. C. 620=IV U. D. 775=6 R. D. 259.

<sup>5</sup> *Ib.*, *Hafizan v. Chokhor Lal*, VIII U. D. (H. C.) 131=8 L. R. Rev. 132=1927 R. C. 123=10 I. C. 526=11 R. D. 627; *Man Mohan Singh v. Mukat Manohar*, XI U. D. 214. See note 21 to section 26 *ante* at p. 167.

<sup>6</sup> *Bahoran v. Bed Ram*, 1941 R. D. 4; *Kamta Ram v. Atimullah*, 1941 R. D. 259.

grove, and the expropriator was the holder of a grove before he became a tenant.

In *Man Mohan Singh v. Mukat Manohar*,<sup>1</sup> the Board acted on the assumption that the expropriator had become a grove-holder, and held that though the leading quality of the land was groveland, the assessment and payment of rent under section 29 was not an inconsistent liability and will not be superseded. That is, the land had to be assessed having regard to the kind of soil and its value as agricultural land; and the land will then be subject to section 206 and the payment of rent. The only question that the Board had to consider was whether the *sir* had lost its character by the plantation of a grove, and, if it had not, the measure of the rent. The rest is pure *obiter*.

*Let or granted*—These words perhaps contemplate two different sets of circumstances, *viz*, leasing land as to a tenant on some rent fixed or to be fixed, and granting land without the idea of any rent ever being claimed—the latter being the more common practice. The words emphasise the idea that a letting or granting must be by *A*, a landlord or under-proprietor or permanent tenure-holder, to *B*. Hence, the words exclude a proprietor who has planted a grove on his own land from the conception of a grove-holder and the fact that after plantation of a grove the landlord, under-proprietor or permanent tenure-holder ceases to be so is immaterial. This fact will not turn him into a grove-holder. See the cases cited under note 2 *ante*.

Should *B* be a non-landlord or non-permanent tenure-holder, etc? In other words, if the proprietors of a *mihal* or a permanent tenure-holding let or grant to one of themselves a land to plant a grove, will he become a grove-holder? Since, they cannot let the land to one of themselves as a tenant, there is no reason why, he should not by such letting or grant, become a grove-holder

Where an area was declared not to be a grove and the tenant was ordered to be ejected but held over, plantation of trees by him would not convert it into a grove<sup>2</sup>

In class (a), if the custom is disputed, it should be put in issue.<sup>3</sup> Proof will be furnished by entries in *wajib-ul-arzes* or other administration papers. In class (b), the written permission must be proved. Such written permission will not, as heretofore, be presumed from the fact that a grove has existed for a considerable period. If the grove existed at the date of the Act in Oudh, or on 7th September, 1926 in Agra, the permission need not have been in writing and may have been express or implied.

A grove can be planted by a tenant only with the zamindar's consent. A plea that the trees were the groves of the defendant involves a plea that the trees had been planted with the zamindar's consent.<sup>4</sup>

<sup>1</sup> XI U. D. 214.

<sup>2</sup> *Salig Ram v. Sri Ram Singh*, XX U. D. 17=1938 R. D. 771.

<sup>3</sup> *Megh Singh v. Nazar Fatma*, B. R. 4 of 1911.

<sup>4</sup> *Ajodhia v. Bishambhar Nath*, 12 L. R. Rev. 30=XII U. D. (H. C.) 62.



The fact that a grove has not been planted on land granted for that purpose, will not entitle the grantor to eject, if it is still possible to plant one and an unreasonable time has not elapsed.<sup>1</sup> In 6 L. R. Rev. 98, the lease was permanent, and no time limit was placed for the planting of the orchard. The grantee was also empowered to cultivate the land beneath the fruit trees. A single judge seems to entertain a different opinion.<sup>2</sup> If only a part of the land granted for planting a grove is so utilised and the rest is not used for any inconsistent purpose the land remains a grove-land.<sup>3</sup>

In case (c) the letting for the required purpose must be proved. The existence of a grove for a long period without any objection by the landholder will be strong evidence of the letting.<sup>4</sup> The lease or grant of land for the purpose of planting a grove need not have been in writing although permission to an existing tenant to plant a grove on his holding should be in writing.<sup>5</sup> If there is a written permission and the grove has existed for five years without objection, permission is of course proved.<sup>6</sup>

In Oudh, it was held that if a plot of land was given to plant a grove the landlord was not entitled to enter into possession, of portions of the grove which had become vacant, as the plot must be taken to have been granted as a whole and the tenure must stand or fall as a whole, unless some custom or contract was shown to the contrary.<sup>7</sup>

This rule applied only when the entire area was held under one single grant, and not when separate groves were held under separate grants.<sup>8</sup>

4. **Merger.**—Where a grove-holder purchases a share in the *patti* in which the grove is situate, there is no merger, so as to turn the grove into a co-sharer's grove.<sup>9</sup>

<sup>1</sup> *Chhote v Faquir*, 6 L. R. Rev. 98=1925 R. C. 202=3 R. D. 419; *Babu Lal v. Laiq Singh*, XI U. D. 37=11 L. R. Rev. 33=14 R. D. 111.

<sup>2</sup> *Raghu Nath v. Muhammad Ali Hasan Khan*, 1928 A. I. R. All. 117=8 L. R. Rev. 292=VIII U. D. (H. C.) 261=1927 R. C. 327=11 R. D. 289.

<sup>3</sup> *Barmha v. Ram Dulare*, B. R. 8 of 1925=VI U. D. (B. R.) 91=6 L. R. Rev. (Oudh) 89.

<sup>4</sup> *Badri Prasad v. Bhim Sen*, B. R. 2 of 1892; *Makund Prasad v. Debi*, B. R. 7 of 1893; *Nawab Husain v. Lachman*, 3 L. R. Rev. 4=5 R. D. 37; *Dildar v. Gokal Das*, 12 Rev. and Cr. L. J. 198=1926 R. C. 217=VII U. D. 137=7 L. R. Rev. 189=10 R. D. 490; *Rim Dihal Lal v. Durga Prasad*, 14 L. R. Rev. 89=XIV U. D. 33 (coupled with mortgage of the land as grove to the landlord, leads to the inference of permission to plant).

<sup>5</sup> *Jai Devi v. Tota Ram*, XVII U. D. 70.

<sup>6</sup> *Puttu v. Ram Chandra*, XIV U. D. 115=14 L. R. Rev. 284.

<sup>7</sup> *Lal Jagdish Bahadur Singh v. Ragho Ram*, VII U. D. (H. C.) 186, relying on *Jwala Singh v. Sahab Din Singh*, 9 O. C. 109; *Har Sahai v. Dhanpal Singh*, 20 L. J. 589=32 I. C. 368, so also in *Matabhik v. Kala Din*, VIII U. D. (H. C.) 153.

<sup>8</sup> *Lachmi Narain v. Kamta Prasad*, 1932 A. I. R. Oudh 281=9 O. W. N. 677=16 R. D. 487=13 L. R. Rev. 312=XIII U. D. (H. C.) 162

<sup>9</sup> *Jamna Dube v. Mathura Rai*, 1934 A. L. J. 661=1934 A. I. R. All. 676=XV U. D. (H. C.) 79=16 L. R. Rev. 399=18 R. D. 253

**206.** Notwithstanding anything in this Act, or any custom or contract to the contrary—  
Rights and liabilities of grove-holder.

- (a) the rights of a grove-holder shall, subject to the provisions of clauses (a) and (b) and clauses (d) to (f) of sub-section (1) of section 45, which shall apply to grove-holders as they apply to tenants, subsist so long as grove-land retains its character as such. On the land ceasing to be grove-land the holder shall become a hereditary tenant of such land ;
- (b) a grove-holder may replant trees as they are cut or die and any person who is recorded as a grove-holder of any land on the 1st day of July, 1937, and is in possession thereof at the commencement of this Act, may replant trees thereon within three years of the commencement of this Act ;
- (c) the interest of a grove-holder shall be transferable by voluntary transfer or in execution of a decree of a civil or revenue court or otherwise ;
- (d) the interest of a grove-holder shall devolve according to the personal law applicable to him ;
- (e) while the land continues to be grove-land, a grove-holder shall be liable to ejectment on one of the grounds mentioned in section 172, and the provisions of section 157, section 159, section 160, section 162, section 173, section 174, sections 181 to 183, section 185 and section 186 shall apply to him as if he were a tenant ;
- (f) the provisions of sections 59 to 64 and of Chapter VII and of clauses (a), (b), (d) and (e) of section 236 and of sections 237 to 240 shall apply to grove-holders as they apply to tenants, except that the provisions of section 148 shall apply only to the extent to which they refer to the recovery of rent by suit ;
- (g) where a person becomes a grove-holder in respect of land of which he is a tenant, he shall hold such land as grove-holder in supersession of all subsisting rights and liabilities so far as they are inconsistent therewith.

1. The section reproduces with slight alterations section 197 of the Act of 1926. Clause (a) has been substituted for clause (a) of section 197, clause (b) is new, clause (c) is clause (b) of section 197, clause (d)

is in effect clause (e) of the same, clauses (e), (f) and (g) are in effect, clauses (e), (f) and (h) of the same, and clause (g) of section 197 has been omitted.

**2. Notwithstanding any custom or contract to the contrary**—The section is now absolute in its terms and will not be governed by a custom or contract to the contrary.

**3. Clause (a).** On the land ceasing to be grove-land, a grove-holder will become a hereditary tenant and his rights as grove-holder shall cease. This was also the gist of clause (a) of section 197.<sup>1</sup> There the presumption was that a grove-holder held as a non-occupancy tenant on a lease the term of which could expire when the land ceased to be grove-land.<sup>2</sup>

If the grove stood on a Government estate, the holder became an occupancy tenant on its disappearance, under section 16 of the Act of 1926.<sup>3</sup>

All which a grove-holder may do under clause (b) etc., of the section is limited by the words in clause (a) "so long as grove-land retains its character as such." Once this chance is lost he ceases to be a grove-holder in a position to take advantage of clauses (b) etc.

**Subject to the provisions of " clauses (a) and (b)...section 45."**—It means that when a grove-holder dies without heirs, or has been ejected in execution of a decree or order, or the grove has been acquired under the Land Acquisition Act, or the grove-holder's rights have been extinguished by adverse possession his interest as a grove-holder shall cease even though the land does not cease to be grove-land.

**Which shall apply etc**—Section 45 (1) clauses (a), (b), and (d) to (f) apply to grove-holders whose interest will be extinguished on the happening of any of the events mentioned in those clauses

The holder will not be liable to ejectment so long as the grove lasts.<sup>4</sup>

A grove at the time of ejectment consisted of (1) three big mango trees and (2) a number of *jamun*, *nim*, *babul* and *khajoor* trees, and (3) 24 small newly planted mango trees. The trees in no. (2) must be taken to be self-sown. As to trees in no. (3) unless it is shown that their number was at the date of plantation sufficient to constitute the land a grove, and that they were ordinary renewal, they cannot be taken into consideration and three mango trees in an area of one and a half acres do not make a grove. Hence the grove has ceased to be one.<sup>5</sup>

**So long as groveland retains its character as such**—This necessarily indefinite phraseology fixes the term of a grove-holding. And one must therefore enquire when a grove-land ceases to be grove-land. In *Raman*

<sup>1</sup> *Banwari Lal v. Abid Hussain*, XIX U. D. 80=1938 R. D. 120; *Ram Sahai v. Het Singh*, B. R. 5 of 1937=XIX U. D. 58=1938 R. D. 108

<sup>2</sup> *Bahadur v. Parbhu Narain Singh*, 53 All 636=XII U. D. (H. C) 104.

<sup>3</sup> *Mattoo v. Raja Ram*, XVIII U. D. 165.

<sup>4</sup> *Muh. Bashir v. Sukh Nandan*, V U. D. 58=3 L. R. Rev 126=7 R. D. 140.

<sup>5</sup> *Kailash Behari Lal v. Mukta Prasad*, XVIII U. D. 136=1937 R. D. 599.

*Das v. Parshotam Singh*,<sup>1</sup> a rule similar to that in clause (a) was laid down. Disappearance of trees generally brings about this result unless there is a right to replant trees.

Where all or so many of the trees have disappeared without replacement, so that at a given moment, the character of grove cannot, according to the definition, be said to exist, the holder will have no right to replant the grove. If a grove-holder who has sold his grove retakes forcible possession of the site after the trees have been cut down by the purchaser, he is a trespasser and not a tenant.<sup>2</sup>

Grove-land ceases to be such when the number of trees thereon has so far diminished as to take away the character of the plantation as grove. No replantation is permissible.

When the trees in a grove disappear in such number that the grove becomes fit for cultivation or other uses than that of a grove, and the grove-holder has no right to plant new trees or replace fallen ones, the grove loses its character as such.<sup>3</sup>

The test is not the number of trees but whether the position of the trees etc. prevents the land from being put to uses of cultivation etc.<sup>4</sup>

Where after cutting down the trees the holder abandons the land which thereupon reverts to the landlord, he or his heirs cannot, ten or twelve years after, plant trees without the landlord's consent, and then claim the status of grove-holder, because at the date of the suit, the land has the appearance of a grove.<sup>5</sup> What the learned judges omitted to consider was whether consent or acquiescence of the landlord to the replanting could not be inferred from the absence of an objection to the replanting, or of any action for 6 years.

The rule that on such disappearance the groveholder becomes a tenant renders obsolete the rulings in the footnote<sup>6</sup> to the effect that he

<sup>1</sup> B. R. 14 of 1912.

<sup>2</sup> *Gulzari Lal v. Azmatullah*, 14 L. R. Rev. 597=XIV U. D. 303; *Hori Lal v. Rang Lal*, XIII U. D. 188=14 L. R. Rev. 78; *Durga Narain Singh v. Munna Lal*, 14 L. R. Rev. 840=XIV U. D. 500; *Muh. Qazmi v. Abudunnissa*, XIII U. D. 32=13. L. R. Rev. 195.

<sup>3</sup> *Suraj Bikram Singh v. Din Bandhu*, XX U. D. 275.

<sup>4</sup> *Manohar Das v. Kasim Husain*, XX U. D. 280.

<sup>5</sup> *Hazari Lal v. Nimar*, 45 All. 386=21 A. L. J. 277=1923 A. I. R. All. 295=V U. D. (H. C.) 155=4 L. R. Rev. 147=9 R. and Cr. L. J. 119=1923 R. C. 104=79 I. C. 1038=7 R. D. 206.

<sup>6</sup> *Ramandas v. Parshotam Das*, B. R. 14 of 1912; *Ganga Sahai v. Makund Ram*, III U. D. 441; *Bisundhari Rai v. Sagar Rai*, IV U. D. 537=2 L. R. Rev. 36; *Muh. Asghar Husain v. Bharat Singh*, X U. D. 12=10 L. R. Rev. 253=13 R. D. 158; *Ram Das v. Muh. Abdul Haq*, I U. D. 325; *Mathura v. Abdul Rahman*, I U. D. 377; *Sheo Piarey Lal v. Jasoda*, IV U. D. 131, 243=6 R. D. 237; *Kishori Lal v. Rameswar*, IV U. D. 171=2 U. P. L. R. (B. R.) 67=56 I. C. 980=6 R. D. 268; *Matu Baksh v. Murlidhar*, B. R. 8 of 1912; *Sri Govind v. Kanhai*, VII U. D. (H. C.) 7=9 R. D. 220.

became a person retaining possession without consent and amenable to section 34 of Act II of 1901 (now s. 180).

Before the Act of 1926 the *test usually applied* was the density of the trees left on the land, *i. e.*, how many trees on a grove are sufficient to constitute a grove. See note "grove-land" at page 22 *ante*. As indicated above this is no longer the true test, though it may be some evidence of intention. Even before it was laid down in several cases that though the number of trees left may not be large, if there are indications that the holder was preparing to plant more, the groveland retained its character.<sup>1</sup>

Whether a grove ceases to be a grove depends very much on the circumstances of each grove, and not so much on the number of trees left, or on the rulings in previous cases as to that. A good deal depends on the size of the trees, the use made of the land and the right or otherwise of replantation.<sup>2</sup>

A finding that so many trees exist is not a finding of fact that these trees do or do not constitute a grove.<sup>3</sup>

In deciding whether a grove has disappeared, the fact that the land has become devoid of trees is one fact, and that the landlord has not objected to the replanting of trees is another,<sup>4</sup> to be considered. When only a part has become devoid of trees, the character of the grove is not changed.<sup>5</sup>

Where a grove on half a grove-land has ceased to exist, it cannot be divided up into grove-land and *banjar*, but the whole remains grove-land, although the revenue authorities have assessed revenue on the *banjar* portion.<sup>6</sup>

If the portion that has ceased to be grove passed on partition to the *kura* of another mahal, the groveholder becomes a hereditary tenant in respect of it although the other portion remains a grove.<sup>7</sup>

A holding which was grove-land of A was split up into two in about 1924, but without fixing any line of demarcation. The patwari gave effect to this division in his papers without any objection. Ostensibly the zamindar did not know of this division. One part remained covered with trees and the other became bereft of them. The

<sup>1</sup> *Manki v. Suraj Man*, II U. D. 395.

<sup>2</sup> *Babu Lal v. Laiq Singh*, XI U. D. 37.

<sup>3</sup> *Babu Lal v. Lark Singh*, XI U. D. 37.

<sup>4</sup> *Babu Lal v. Laiq Singh*, XI U. D. 37=11 L. R. Rev. 33.

<sup>5</sup> *Har Sahai v. Dhanpal Singh*, 2 O. L. J. 589=32 I. C. 368; *Mahbub Ali Khan v. Chhidu*, 24 A. L. J. 599=7 U. D. (H. C.) 157; *Jwala Singh v. Sahab Din Singh*, 9 O. C. 109; *Lodai Khan v. Sukhdeo*, VI U. D. (H. C.) 470=6 L. R. Rev. 147=11 R. and Cr. L. J. 178; *Lal Jagdish Bahadur Singh v. Ragho Ram*, VII U. D. (H. C.) 128.

<sup>6</sup> *Prem Shankar v. Shri Narain*, XVII U. D. 145=1936 R. D. 348; *Raghubir Singh v. Ghulam Qadir Khan*, XVIII U. D. 140=1937 R. D. 166.

<sup>7</sup> *Allah Jalle Shahnu v. Raj Bahadur*, XVIII U. D. 19=1937 R. D. 43; *Asad Ali Khan v. Lachmi Narain*, 1938 A. L. J. (B. R.) 75.

holder sold the first to *B* and kept the second for himself. On zamindar's suit to eject it was held that the unitary character of the grove was lost and *B* could be ejected. The case of *Prem Shankar v. Shri Narayan* was distinguished on the ground that the area which became denuded of trees was separated from the other.<sup>1</sup>

So long as the character of a grove is maintained the holder is entitled to keep it, although he cultivates it.<sup>2</sup> When a grove of fruit-trees has disappeared and the trees found thereon are of the self-sown variety, such as *babul*, *shisham*, and are not contained within an enclosure, and the land has been recorded as tenancy for a considerable time, it has ceased to be a grove.<sup>3</sup>

Before the Act it was held that cultivation of the land so long as the size of the newly planted trees permitted did not cause loss of the character of a grove, for the use of the land was not primarily for cultivation purposes.<sup>4</sup>

But if the land, vacated by fallen trees, the number left being so small as not to constitute a grove, has been used for agriculture and the conduct shows no intention of replacing them, the grove ceases to be grove.<sup>5</sup>

Where the number of trees in a grove have been considerably reduced, the facts that the vacant spaces have not been cultivated, that the holder did plant new trees, though belatedly, and that the landlord took no steps to eject the holder but new trees were being actually planted, constitute strong evidence that the grove is still a grove.<sup>6</sup> So long as any considerable portion of a plot granted for a grove has a sufficient number of trees to prevent the portion from being cultivated, assuming the trees to have reached their full size, the whole plot granted will retain its character as a grove, otherwise not. Existence of four trees in a holding of 3 bighas is not sufficient to prove the retention of the character of a grove.<sup>7</sup>

The test is not when a grove has ceased to be a grove, for in spite of the event, the land on which it stood may still be groveland. The test is supplied by the definition of groveland in section 3(6) *e. g.*, whether the trees are in such numbers that when full grown they will preclude the land or any considerable portion thereof being used primarily for any other purpose. Where most of the trees have disappeared, and the land has been used for cultivation, the question will be whether

<sup>1</sup> *Badri Narayan v. Sugriv Singh*, XX U. D. 133—1939 R. D. 36.

<sup>2</sup> *Mehuli Ali Khan v. Gurdin*, 2 O. C. 73 ; *Birbal v. Bhagwan Sahai*, V U. D. 509—4 L. R. Rev 396—10 R. and Cr. L. J. 18.

<sup>3</sup> *Ganga Sahai v. Sardar*, 10 R. and Cr. L. J. 264—V U. D. 147.

<sup>4</sup> *Mahadeo Singh v. Kesho Das*, II U. D. 339 ; *Jagan Nath v. Dep. Com.*, II U. D. 17.

<sup>5</sup> *Lachmi Nurain v. Sardar*, I U. D. 123.

<sup>6</sup> *Babu Lal v. Laiq Singh*, XI U. D. 37.

<sup>7</sup> *Daropadi v. Mannu Lal*, 1924 A. I. R. All. 557—X U. D. (H. C.) 216—10 L. R. Rev. 272—13 R. D. 644.

the idea of keeping it as a grove has been abandoned, or whether the vacancy of the land is only temporary, the holder retaining the intention to replant, provided he has the right to do so. Hence, three things have to be ascertained, *viz.*, (i) the duration during which a considerable area of the land has been denuded of trees and used for cultivation, (ii) the conduct of the holder and of the proprietor during the period, and (iii) whether by law, agreement or custom the holder has the right to replant.

In the absence of proof of any such custom or contract, the matter will depend upon consent. Where after cultivating the land for some time, the holder replanted the grove and there was no objection for 15 years, consent was presumed, and the planter was not allowed to be ejected as yearly tenant.<sup>1</sup>

4. **Clause (b)**—Section 206 (a) and section 206 (b) are not easily reconciled for the purposes of section 206 (b) the question whether the plot is still a grove or not does not arise. All that is required is that on 1st July 1937 the plot must have been held as a grove and on 1st January 1940 it must have been till in the possession of the defendant.<sup>2</sup>

So long as a grove retains its character as such, the holder had and has inherent right to replace with fresh trees those decayed, fallen down or cut in the course of good husbandry or management<sup>3</sup>; provided that there is no inordinate delay in replacing and the character of the land as groveland is not lost, though the land is being cultivated so long as the size of the new trees permits.<sup>4</sup> The existence of the right was strengthened by the record of a custom to that effect in the *wajib-ul-arz*.<sup>5</sup> Now the replanting must take place as the trees are cut or die out, *i. e.*, within a reasonable time of such event. A person recorded as grove-holder at the commencement of this Act has three years to replant the trees. Except as to the last, the old law stands good.

The general law was that a groveholder was entitled to keep up the character of a grove by planting new trees in place of old ones before the grove had lost its character as such and the proprietor's right of re-entry under the law, agreement or custom has accrued unless the *wajib-ul-arz* in distinct terms negatived it.<sup>6</sup> In this case, a large number of trees had disappeared and a large number had from time to time been planted. The grove was held to retain its character and the terms of the *wajib-ul-arz* were held not to cut down

<sup>1</sup> *Gujudhar v. Lal Bahadur*, I U. D. 125=33 I. C. 322, see also *Ram Singh v. Hunnu*, 1923 R. C. 24=7 R. D. 349=4 L. R. Rev. 352=1923 R. C. 259=V U. D. 561 (in spite of an intermediate agreement to pay rent).

<sup>2</sup> *Madan Gopal v. Sankatha Prasad*, 1941 R. D. 526.

<sup>3</sup> *Hori Lal v. Rang Lal*, XIII U. D. 138=14 L. R. Rev. 78; *Jai Ram v. Pahladi Lal*, IV U. D. 452=2 L. R. Rev. 78=4 U. P. L. R. (B. R.) 6=7 R. and Cr. L. J. 170=5 R. D. 232; *Indra Kuar v. Gyan Singh*=VI U. D. 239=5 L. R. Rev. 299=1924 R. C. 418=8 R. D. 26; *Hamid Husain v. Tula*=XX U. D. 52=1939 R. D. 886.

<sup>4</sup> *Mahadeo Singh v. Kesho Das*, II U. D. 339.

<sup>5</sup> *Ahmad Husain v. Jumnar*, V U. D. 423=4 L. R. Rev. 180=1923 R. C. 138=9 R. and Cr. L. J. 176=7 R. D. 235.

<sup>6</sup> *Chokhey Lal v. Behari Lal* 18 A. L. J. 820=IV U. D. 789=2 U. P. L. R. (H. C.) 292=60 I. C. 115=6 R. D. 372.

the rights under the general law.<sup>1</sup> The fact that the holder had cut down most of the trees before replanting the grove may not be very material.<sup>2</sup>

Where a grove-holder has been replacing trees as they disappeared not perhaps immediately but after some interval, sufficient number of trees existing at any time to keep up the character of a grove, no question of the disappearance of the grove and its replanting arises, for a grant for purposes of planting a grove implies a right to replace fallen trees. His action in replacing fallen trees under such circumstances shows his intention to keep the grove alive.

An *akrarnama* or a clause of the *wajib-ul-arz* of a village setting forth that no tenant was entitled to plant new trees without the landlords permission is the statement of a custom relating to groves.<sup>3</sup> It fixes the terms entered as incidents of a grove-holder's tenure and applies to all grove-holders therein.<sup>4</sup>

A case<sup>5</sup> arose after the passing of the Tenancy Act of 1926. There, a grove-holder had replaced certain fallen and used up trees and the landlord sued for their removal and for an injunction to restrain future plantations of new trees. The argument on his behalf was that section 197 of the Act of 1926 does not mention the right to replace trees as one of the rights of a grove-holder, and hence, though he had before the Act a customary right to do so, that right must be taken to have been abrogated by the Act. The Bench repelled this contention on the ground that such a valuable right cannot be deemed to be taken away by implication. This view is now embodied in clause (b). Another argument was that since a grove-holder was under the Act a tenant and a non-occupancy tenant, he had no right to make an improvement in respect of his holding, i. e., plant the grove, without the consent of the landlord, and that planting of trees was under the definition contained in section 3 (11) of the Act of 1926 an improvement. The Bench ruled that improvement in section 3 (11) referred to the doing of something new and not to the replacing or renewing of something which already existed or exists on the land, i. e., the maintenance of the character of a grove was not an improvement. The definition in section 3 (11) did not say that in every case the doing of one of the things mentioned therein was necessarily an improvement; it may or may not be so when considered with reference to a particular holding. It may be detrimental to a holding; or it may be neither. Replacing in a grove

<sup>1</sup> See also *Bhog Chand v. Rukmin*, 11 U. D. 730; *Bankery Lal v. Kehar*, II U. D. 729; *Ram Sahai v. Agar Singh*, 2 A. W. N. 10; *Azmatulla Khan v. Mangoo Ram*, 6 A. W. N. 138.

<sup>2</sup> *Nasratyar Khan v. Brij Lal*, IX U. D. (H. C.) 6—9 L. R. Rev. 12—1927 R. C. 448—12 R. D. 161.

<sup>3</sup> *Raghubar v. Suraj Baksh*, 14 R. and Cr. L. J. 192.

<sup>4</sup> *Krishna Pal Singh, v. Chhabraj*, 1931 A. I. R. Oadh 11—XI U. D. (H. C.) 303.

<sup>5</sup> *Amba Sahai v. Naitha*, 55 All. 73—1932 A. L. J. 1026—1933 A. I. R. All. 60—14 L. R. Rev. 4—16 R. D. 591—XIV U. D. (H. C.) 9.



used up trees is no more an improvement than sowing of fresh crops on an ordinary agricultural plot.

On the loss of character of grove-land, the grove-holder becomes a hereditary tenant;<sup>1</sup> The cases noted below are no longer law.<sup>2</sup>

A grove-holder transferred his rights as such to A. He had already admitted B to be its tenant. A then purchased a share in the zamindari. This of course did not merge his grove rights. B cannot deny A's right to be his landholder. A may, when the grove ceased to be a grove, eject B.<sup>3</sup>

When a grove ceases to be such, the trees remaining are the property of the tenant and not of the landholder.<sup>4</sup>

A right to replant implies a right to dig a trench for draining and protecting the grove.<sup>5</sup>

A custom that grove-holders become liable to pay rent on disappearance of their groves was not inconsistent with cl. (a), which therefore applies to such cases.<sup>6</sup>

Certain land was grove-land in the year of settlement, 1305 F. and continued so. No rent was assessed on it, but in the *khataunis* of 1339 F. onwards, entries of certain rent were found. This does not justify a court in passing a decree for arrears of rent as entered in the *khataunis*.<sup>7</sup>

Groveland liable to pay rent which had become included within a Municipal area, and was purchased by A more than 40 years ago, and A constructed houses etc., on it and has not paid any rent has become A's by adverse possession; and he is not liable to pay rent.<sup>8</sup>

Act XII of 1881 did not make illegal a mortgage by a subtenant of a grove. On the death heirless of the mortgagor, his rights reverted to his landholder who could redeem the mortgage.<sup>9</sup>

<sup>1</sup> *Fakhruddin Husain v. Abdul Wahid*, 1938 A. L. J. 208=XIX U. D. (H. C.) 49=R. D. 367; *Dicarka Prasad v. Suraj Narain*, XIX U. D. 31=1938 R. D. 39; *Jai Kishen Lal v. Ganqa Singh*, XX U. D. 165=1939 R. D. 130.

<sup>2</sup> *Girwar Sahai v. Janki*, B. R. 3 of 1883; *Rookminee v. Bakshi*, 5 N. W. P. 158; *Kishori Saran v. Rameshar*, IV U. D. 171=56 I. C. 890=2 U. P. L. R. (B. R.) 67=6 R. D. 268; *Prag Narain v. Hulasi*, IV U. D. 266=2 U. P. L. R. (B. R.) 72=6 R. and Cr. L. J. 233=6 R. D. 467.

<sup>3</sup> *Nazir Uddin v. Piroo*, XIX U. D. 100=1938 R. D. 183.

<sup>4</sup> *Ram Chandra Singh v. Chhabile Singh*, 14 L. R. Rev. 210=XIV U. D. 100.

<sup>5</sup> *Dianat v. Ram Chunder*, 5 O. L. J. 741.

<sup>6</sup> *Ajayvarma v. Durga Baksh*, XIV U. D. 193=14 L. R. Rev. 448; *Muh. Abbas Khan v. Ram Ratan Singh*, IX U. D. 6=7 L. R. Rev. 9=1921 R. O. 427=12 R. D. 68; *Jalpa Singh v. Thakur Prasad*, IV U. D. 498=7 R. and Cr. L. J. 164=2 L. R. Rev. 65=5 R. D. 277; *Sri Gobind v. Kanhaiya Lal*, VII U. D. (H. C.) 7=9 R. D. 220.

<sup>7</sup> *Muh. Said Khan v. Mahadeo*, XVIII U. D. 179=1937 R. D. 267.

<sup>8</sup> *Subhadra Kuar v. Ram Sewak*, 14 L. R. Rev. 869.

<sup>9</sup> *Arjun Singh v. Mahesha Nand*, 1932 A. L. J. 474=11 L. R. Rev. 337=XII U. D. (H. C.) 170.

5. **Clause (c).**—The right to transfer is recognised as absolute. Some such right was recognised before the Act.<sup>1</sup>

In Oudh it was held in several cases that when the custom of a village is against sale of groves, either absolutely or without permission, a sale was an illegal transfer which entitled the landlord to resume possession<sup>2</sup>; and there was no general custom in Oudh against transfers of groves.<sup>3</sup>

When a grove is inalienable by custom, it is not liable to attachment and sale in execution of a decree against the grove-holder.<sup>4</sup>

A mortgage contrary to a custom against transfers was considered to be an abandonment of the holding so as to give the landlord a right of re-entry.<sup>5</sup>

It was held that where a grove could according to custom be sold only with the consent of the landlord and a joint Hindu family was the landlord, the consent of its manager was enough.<sup>6</sup>

Where *A* purchases a grove with its site, he cannot be legally deprived of his right of possession by *B* who has subsequently purchased the zamindari in which the grove is situate.<sup>7</sup>

<sup>1</sup> *Haidar Ali v. Panna*, 26 A. W. N. 204; *Haji Muhammad Ismail Khon v. Mithan Lal*, 11 A. L. J. 491=17 I. C. 556; *Muh. Yasin v. Ilahi Buksh*, 34 All. 545=16 I. C. 455; *Pohap Singh v. Sheo Govind*, B. R. 1 of 1913; *Baij Nath v. Chandrapal*, 47 All. 55=21 A. L. J. 457=1923 A. I. R. All. 553=73 I. C. 529=1923 R. C. 345=10 R. and Cr. L. J. 301=VI U. D. (H. C.) 196=8 R. D. 93; *Ram Ratan v. Dwarka Prasad*, V. U. D. 568=10 R. and Cr. L. J. 33; *Bhaiya Lal v. Sheo Govind*, VII U. D. 2=1926 R. C. 263=4 L. R. Rev. 361=1923 R. C. 445=7 R. D. 858; *Mathura Prasad v. Shiam Nath*, VIII U. D. 114=8 L. R. Rev. 345=1927 R. C. 393=11 R. D. 565; *Muhammad Umar v. Ram Peari*, XX U. D. 60=1938 R. D. 916.

<sup>2</sup> *Jag Mohan v. Deputy Commissioner*, 1921 A. I. R. Oudh. 13=61 I. C. 945; *Ali Muhammad Khan v. Chedan*, 15 I. C. 385=15 O. C. 91; *Ram Din v. Balbhaddar Singh*, 1939 A. I. R. Oudh 210=1939 O. W. N. 373=1939 R. D. 250; *Mahabir Prasad v. Uma Shankar*, 28 O. C. 133=VI U. D. (H. C.) 366=6 L. R. Rev. (O) 39=9 R. D. 565; *Harpal Singh v. Jagwant Singh*, 8 I. C. 1092=13 O. C. 866.

<sup>3</sup> *Muh. Ali Muhammad Khan v. Madari Sah*, IX U. D. (H. C.) 57=9 L. R. Rev. 77=1927 R. C. 518; *Gadabar Prasad v. Sumer Singh*, X U. D. (H. C.) 239; *Ganesh v. Suraj Baksh Singh*, 1926 A. I. R. Oudh 139=VI U. D. (H. C.) 598=5 L. R. Rev. (O) 119=9 R. D. 90.

<sup>4</sup> *Kandhai Lal v. Sheo Nath*, XVII U. D. (H. C.) 77=1936 R. D. 118.

<sup>5</sup> *Ram Raj Singh v. Tej Singh*, VII U. D. (H. C.) 18=8 L. R. Rev. 26=1926 R. C. 580 (bad law now).

<sup>6</sup> *Anrudh Rai v. Sant Prasad Rai*, 1935 A. I. R. All. 746=XVI U. D. 216=1935 R. D. 182=155 I. C. 589.

<sup>7</sup> *Ishar Das v. Chironji Lal*, 1928 A. I. R. All. 169=IX U. D. (H. C.) 22=9 L. R. Rev. 41=1927 R. C. 483=118 I. C. 370=12 R. D. 90.

Where a tenant planted trees on his holding, he could not convert it into a grove with a right of transfer.<sup>1</sup>

The right to plant trees is only for grove-holders. If a tenant who does not hold his tenancy plots as a grove-holder but as a tenant paying rent, plants trees on the plots, he cannot mortgage or sell them and will have no right of possession over the trees after ejectment.<sup>2</sup>

Where a grant for planting a grove was made on the condition that it would not be used for any other purpose, that the grantee could have no right to transfer the grove when planted, and that it would revert to the landlord on the grantee's death without heirs, and on such death a trespasser entered into possession and made alienations, the grantor was held entitled to recover possession within 12 years of the alienations though more than 12 years from the date of the trespasser taking possession, as the trespasser acquired by prescription the same right as the grantee and no more and the act of making use of the subject of the grant contrary to the terms of it gave the landlord a right of re-entry.<sup>3</sup>

The section applies only to trees on grove-land, but not to trees planted on non-grove-land *e.g.*, on ordinary tenancy land,<sup>4</sup> or on land which had ceased to be grove-land,<sup>5</sup> with the result that on ejectment the whilom grove-holder loses all interest in the trees, but before ejectment he is entitled to keep the trees as an ordinary non-occupancy tenant.<sup>6</sup>

There was no specific evidence of custom against right to transfer trees on tenancy land, but there was evidence of sale-deeds that such transfers had taken place and unsuccessfully challenged, and of witnesses in favour of the right to transfer. Two out of three judges holding in favour of the custom of transfer ruled that occupancy tenants who planted groves according to custom could do so without the permission of the landholder and acquired transferable rights in the grove, and their transferees could not be deprived of the benefit of those rights.<sup>7</sup>

Where a grove is on occupancy land, the landlord, though he ejects the occupancy tenant from the land for arrears of rent, cannot affect the right of a previous transferee of the grove, as such a transfer

<sup>1</sup> *Munna Lal v Mahtab*, 1926 A. I. R. All. 387—9 L. R. Rev. 164—IX U. D. (H. C.) 170—116 I. C. 284—12 R. D. 274.

<sup>2</sup> *Gauri Shankar v Nisam Uddin Khan*, 1928 A. I. R. Oudh 19—X U. D. (H. C.) 4 relying on *Chandi Singh v. Arjumand Ali*, 2 O. C. 280.

<sup>3</sup> *Deputy Commissioner v. Bhagwati Dei*, 1930 A. I. R. Oudh 75—XI U. D. (H. C.) 95.

<sup>4</sup> *Mahadiya v. Dakhini Din*, IV U. D. 32—1 L. R. Rev. 85—6 R. D. 124, distinguishing *Gajadhar v. Teja*, II U. D. 416

<sup>5</sup> *Nanhu v. Girdhari Lal*, VI U. D. 121—5 L. R. Rev. 148—10 R. and Cr. L. J. 178—1924 R. C. 153—9 R. D. 519.

<sup>6</sup> *Ram Due v. Muh. Abdul Haq*, I U. D. 325.

<sup>7</sup> *Mubarak Husain v. Sagar Mal*, 1938 All. 396—1938 A. L. J. 400—1938 A. I. B. All. 321—XIX U. D. (H. C.) 66.

is by clause (c) binding on him.<sup>1</sup> A grove planted on an exproprietary holding is transferable.<sup>2</sup>

The rights of a grove-holder may be made the subject of a *waqf* under the Mahomedan Law.<sup>3</sup>

6. Clause (d) —The right of succession is absolute. Succession is governed by the personal law<sup>4</sup> This was also the view before the Act.<sup>5</sup>

Where a greater part of the land had ceased to have trees, which become confined to a strip of the land along the edge, and had been cultivated by the holder, on his death without heirs entitled to succeed under section 35 the landholder may eject his daughter, who has got into occupation, from the cultivated portion, she retaining under the Hindu law the trees and the land<sup>6</sup> occupied by them.

7. Clause (e) —The liability to ejectment is now not subject to a custom or contract to the contrary.<sup>7</sup> The grounds of ejectment are limited to those in section 172 *i. e.*, act detrimental to the holding or inconsistent with the purposes for which it was let, and breach of a condition entailing forfeiture.

As to causes which may entitle a landlord to sue for ejectment under section 172 one may mention construction of buildings in such a way that its character as grove disappears.<sup>8</sup> Cutting down trees in order to bring the land under cultivation may also give rise to a suit under section 172. So if the grantee does not plant a grove according to the terms of the grant but uses the land for cultivation or other purposes, section 172 may apply.

While the land continues to be grove-land, as in clause (a).—On the land ceasing to be grove-land the restriction on the right to eject, say under section 171, will be removed. As a grove-holder will then become a hereditary tenant he will not be liable to ejectment as a non-occupancy tenant under section 175, but only in circumstances as

<sup>1</sup> *Mukarram Husain v. Abdul Shakur*, XII U. D. 175=15 R. D. 527.

<sup>2</sup> *Panchasti Akhara v. Nasir Uddin*, 1931 A. I. R. All. 752=1931 A. L. J. 694=12 L. R. Rev. 276=XII U. D. (H. C.) 135=15 R. D. 263

<sup>3</sup> *Amir Ahmad v. Muh. Ejaz Husain*, 58 All. 464=1936 A. I. R. All. 15=1935 A. L. J. 1317=XVI U. D. 657=1935 R. D. 515

<sup>4</sup> *Heta v. Ramji Lol*, 11 L. R. Rev. 252=XI U. D. 134=14 R. D. 471.

<sup>5</sup> *Habibullah v. Kattan D.s.*, 12 A. L. J. 1080=25 I. C. 169. See also II U. D. 416.

<sup>6</sup> *Gajadhar v. Teja*, II U. D. 416.

<sup>7</sup> This nullifies *Jugar Nath v. Maharaja of Bilrampur*, II U. D. 508.

<sup>8</sup> See *Bahadur v. Parbhu Narain Singh*, 53 All. 186=1931 A. L. J. 408=1931 A. I. R. All. 553=XII U. D. (H. C.) 104=12 L. R. Rev. 249; *Man Singh v. Jagat Narain*, XIV U. D. (H. C.) 139=1934 A. L. J. 443=1934 A. I. R. All. 312=17 R. D. 1090.

would justify the ejectment of hereditary tenants, *e. g.* for arrears of rent or a decree therefor.

The provisions of section 157 will apply, that a grove-holder is not liable to be ejected except as provided by the Act, *i. e.*, section 172. Sections 173, 174 will apply, that is, ejectment may be confined to a part, and a decree for his ejectment may direct that if he pays compensation or repairs within the time mentioned in section 173, the decree will not be executed. The landlord can sue as in section 174. Section 159 deals with the right to compensation for improvement and section 160 with the right to trees and crops or ejectment. Section 162 protects from ejectment from residential house. Sections 181 and 182 will apply in the matter of execution of a decree for ejectment, and a grove-holder wrongfully dispossessed will have the remedy of section 183.

If a grove is still a grove, although a number of trees have been cut down, the fact that the holder has sublet portions of the vacant land for cultivation and is planting new trees, will not entitle the landlord to sue for ejectment or for an injunction restraining the holder from planting or cultivating the land.<sup>1</sup>

Where a grove and certain sub-plots separated from it by a canal are parts of one plot and let under one agreement, it is not permissible to separate the sub-plots.<sup>2</sup>

There is difference between a case where land is let for planting a grove, and a case where an established grove is let. In the former case, the landlord cannot eject the holder so long as the grove stands; in the latter case he can by proceeding in ejectment under the Act.<sup>3</sup>

And a grove-holder who has sublet the grove may eject the sub-lessee by ejectment proceedings under the Act.<sup>4</sup>

Under Act II of 1901, it was held that a groveholder turned out of possession by the landlord after disappearance of the grove could not sue under section 79 of that Act<sup>5</sup> (corresponding to present section 183).

In Oudh it was held that where the custom provided for escheat of groves to the landlord in case of the tenant of a grove leaving the village and the tenant was a family, departure of some members of the family from the village did cause escheat.<sup>6</sup>

<sup>1</sup> *Ganga Ram v. Basant Singh*, 1930 A. L. J. 1039—124 I. C. 763—14 R. D. 583.

<sup>2</sup> *Hari Shankar v. Ibrahim*, XII U. D. 65—15 R. D. 65.

<sup>3</sup> *Kashi Nath v. Data Din*, V U. D. 344—4 L. R. Rev. 71—9 R. and Cr. L. J. 110—1922 R. C. 567—7 R. D. 557.

<sup>4</sup> *Partab Chand v. Saraswati*, III U. D. 474—4 R. D. 284; *Ram Sundar v. Jogi*, B. R. 1 of 1908.

<sup>5</sup> *Sheo Nandan Singh v. Lachman Rai*, I U. D. 190—29 I. C. 447; *Kesho Prasad Singh v. Sheo Prugash*, 19 A. L. J. 749, in P. C., 46 All. 831—23 A. L. J. 168—1924 A. I. R. (P. C.) 247—82 I. C. 962—6 L. R. Rev. 1—1925 R. C. 179.

<sup>6</sup> *Zalim Singh v. Sheo Mangal Singh*, XII U. D. 333—12 L. R. Rev. 293.

The remedy of section 183 is open to grove-holder. After disappearance of the grove, he becomes a hereditary tenant and should be ejected only in due course of law or he will have this remedy, as was the case before.<sup>1</sup>

A co-sharer leases a grove standing on his *sir*, for 5 years, 1337—1341 Fasli, to A, who is also given the right to enjoy the grove up to the end of 1336, *i. e.*, prior to the commencement of the lease. The lease is *zar-i-peshgi*, the whole of the rent for the period of the lease being paid in advance. The co-sharer before the end of 1336 Fasli sold his share to B and surrendered his *sir* rights. B took possession of the grove wrongfully. It was held that it could not be inferred that A took the lease in bad faith and he was entitled to remain in possession for the term of his lease, and could sue B under section 183.<sup>2</sup>

Cutting down a tree in a grove is not dispossession from the grove which under the section would bar the civil court's jurisdiction for damages therefor; and moreover if the defendant is a member of a joint Hindu family, the family and not he is the landholder.<sup>3</sup>

*Forum of suit.* Since a groveholder is a hereditary tenant, a proceeding for his ejectment on any of the grounds mentioned in section 172 lies exclusively in a revenue court.<sup>4</sup>

This even though the lease under which it was let was before 1926, and expired before that year and the fact that the defendant denied plaintiff's title to it does not give jurisdiction to Civil Court.<sup>5</sup>

Before the Act of 1926 abandonment by a grove-holder did not *per se* give the landlord a right of re-entry.<sup>6</sup> It will not do so now.

The chapter on resumption was held not to be applicable to grove-holders, before the Act of 1926.<sup>7</sup>

8. **Clause (f).** Sections 59 to 64 will apply and the right of suit conferred by sections 59, 61, will apply and temporary injunctions may be granted. Section 236 clauses (a), (b), (d) and (e) and sections 237 to 240 of the chapter relating to compensation and penalties will also apply.

<sup>1</sup> See *Ram Chandru Singh v. Chhabile Singh*, 14 L. R. Rev. 210.

<sup>2</sup> *Maula Baksh v. Ibrahim Khan*, XIII U. D. 117=13 L. R. Rev. 77.

<sup>3</sup> *Kali Charan v. Hari Shankar Singh*, 1937 A. L. J. 1313=1938 A. I. R. All. 146=1938 R. D. 36.

<sup>4</sup> *Sri Kishan Lal v. Bijai Singh*, 54 All. 998=1932 A. L. J. 857=XIII U. D. (H. C.) 155=13 L. R. Rev. 357.

<sup>5</sup> *Radha Mohan v. Riaz Fatma*, 1933 A. L. J. 1184=1934 A. I. R. All. 37=146 I. C. 791=17 R. D. 925=XIV U. D. (H. C.) 908=14 L. R. Rev. 721.

<sup>6</sup> *Muh. Abdul Hafiz Khan v. Ramratan Lal*, 29 I. C. 20; *Ibadunnissa v. Dalganjan*, I U. D. 47=32 I. C. 395. See *Megh Singh v. Nazar Fatma*, B. R. 4 of 1911. But see *Mahabir Prasad v. Ram Kumar*, VI U. D. (H. C.) 308=1925 R. G. 137=5 L. R. Rev. (Oudh) 177=9 R. D. 462.

<sup>7</sup> *Hadi Husain Khan v. Pati Ram*, 11 A. L. J. 936; *Kesho Das v. Hanuman*, 45 All. 640; *Gauri Shankar v. Abu Muhammad*, II U. D. 160=2 O. L. J. 772=33 I. C. 147.

A suit for declaration as to the grove-land and the trees on it is under section 59, and cognisable by a revenue court. Even a suit for the trees in a grove lies in a revenue court as compensation in respect of them can be granted under section 183.<sup>1</sup>

A suit for a declaration that certain groves belong to plaintiff, who claims no interest other than that of a grove-holder, is cognisable only by a revenue court.<sup>2</sup>

If the plaintiff is not and does not claim to be a grove-holder although he planted the trees on a plot of land, the civil court is the proper forum for a suit for declaration and possession.<sup>3</sup>

**Suit for declaration by grove-holder.**—A grove holder could sue in a civil court for a declaration as to possession of trees in a grove on the allegation that he was the owner of the grove,<sup>4</sup> or for a declaration as to the value of the crops cut and sold which had been grown by the plaintiff on the tenancy land of the defendant.<sup>5</sup>

A civil court could declare that the plaintiff was the owner of the trees in a grove,<sup>6</sup> or that he was a grove-holder and wrongly dispossessed by the zamindar.<sup>7</sup>

In Oudh, it was held that a grove-holder could not be considered a tenant under the Rent Act if he did not pay rent or was not liable to pay rent to the landlord<sup>8</sup> and could not be ejected by the revenue court, and if he was, he could sue in a Civil Court for recovery of possession as having been wrongfully dispossessed,<sup>9</sup> or if he recovered possession or refused to deliver possession after a revenue court decree for ejectment, he could resist a civil suit on the ground that he was a grove-holder.<sup>10</sup> If he paid rent he was a tenant, and if he did not set up his rights as

<sup>1</sup> *Naubat v. Jangli*, 1935 A. I. R. All 966=XVI U. D. 481=1935 R. D. 308.

<sup>2</sup> *Habibullah Khan v. Bhabuti*, 1934 A. I. R. All 551=XV U. D. (H. C.) 45=15 L. R. Rev. 258=148 I. C. 175=18 R. D. 209 see also *Bhaggan v. Raghu*, 1936 A. I. R. All. 544=XVI U. D. 267=1936 R. D. 22.

<sup>3</sup> *Bhagwan Din v. Bakridi*, 1931 A. I. R. All 84=XV U. D. 109=18 R. D. 92.

<sup>4</sup> *Ram Prasad v. Sumer Nath*, 45 All. 191=1923 A. I. R. All. 134=9 Rev. and Cr. L. J. 13=21 A. L. J. 33=V U. D. (H. C.) 116=1922 R. C. 554=3 L. R. Rev. 530=76 I. C. 12=7 R. D. 25.

<sup>5</sup> *Mir Khan v. Malkhan*, 45 All. 404=9 Rev. and Cr. L. J. 165=1923 R. C. 126=V U. D. (H. C.) 144

<sup>6</sup> *Lalla Prasad v. Ram Bahadur*, 21 A. L. J. 434=1923 A. I. R. All. 540=1923 R. C. 187=V U. D. (H. C.) 160=4 L. R. Rev. 169=7 R. D. 207.

<sup>7</sup> *Ishar Das v. Chironji Lal*, IX U. D. (H. C.) 22.

<sup>8</sup> *Secretary of State v. Har Charan*, VII U. D. (H. C.) 88; *Durga Prasad v. Ram Charan*, 5 O. L. J. 639; *Lal Jagdish Bahadur Singh v. Ragho Ram*, VII U. D. (H. C.) 128.

<sup>9</sup> *Lal Jagdish Bahadur Singh v. Ragho Ram*, VII U. D. (H. C.) 128; *Gulab Singh v. Ali Begam*, 1928 A. I. R. Oudh 230=X U. D. (H. C.) 41=5 O. W. N. 190=10 L. R. Rev. 24=12 R. D. 28.

<sup>10</sup> *Ib.*

a grove-holder in ejectment proceeding, the revenue court proceedings for ejectment were not *ultra vires*.<sup>1</sup>

Now he must resort to a revenue court for a declaration that he is the grove-holder of a certain grove.<sup>2</sup>

9. **Clause (g).**—This is absolute. The clause was held to have retrospective effect so that if a grove planted on occupancy land lost its character before 1926, the tenant did not resume the status of an occupancy tenant.<sup>3</sup> All ordinary tenancy or other rights and liabilities inconsistent with those of a grove-holder disappear. *E. g.*, if before becoming a grove-holder, he was an occupancy tenant, the holder, as grove-holder, is free from the restraints imposed on tenants by the Act.<sup>4</sup> The planting of a grove on a plot comprised in a holding with the consent of the zamindar changes the character of the land, and the grove can be mortgaged and sold in execution of a decree on the mortgage.<sup>5</sup>

Part of an exproprietary holding land converted into a grove becomes capable of being transferred, *e. g.*, by mortgage, on a decree on which it may be sold.<sup>6</sup>

Is a liability to have rent enhanced included in this? Before 1926, it was held that enhancement could not take place under the enhancement section.<sup>7</sup> And if the holder is a rent-free grantee can rent be assessed?

Rent-free land on which a grove has been planted becomes grove-land, and when the grove ceases to exist, it becomes hereditary land under clause (a) and does not reclothe itself with the character of rent-free land so as to attract section 194 or 195.<sup>8</sup>

<sup>1</sup> *Gulab Singh v. Ali Begam*, 1928 A. I. R. Oudh 230=X U. D. (H. C.) 41=5 O. W. N. 190=10 L. R. Rev. 24.

<sup>2</sup> *Habibullah Khan v. Bhabuti*, XV U. D. H. C. 45=15 L. R. Rev. 250=1934 A. L. R. 549=1934 A. I. R. All. 551=148 I. C. 1175=18 R. D. 209; *Jangal, Tewari v. Naubat*, 1934 A. I. R. All. 680=18 R. D. 250=XV U. D. (H. C.) 75=15 L. R. Rev. 397.

<sup>3</sup> *Asad Ali Khan v. Lachmi Narain Das*, XX U. D. 68=1938 R. D. 777.

<sup>4</sup> So before the Act, *Paryag v. Bijainand*, I U. D. 110=29 I. C. 560; *Beni Rai Ram Prasad*, I U. D. 108=34 I. C. 84; *Pargan Singh v. Umrao*, 34 All. 545=III U. D. 253=17 I. C. 656; *Jalesar v. Raj Mangal*, 43 All. 606=19 A. L. J. 616=1921 A. I. R. All. 68=63 I. C. 437=V U. D. 726=6 R. D. 324; *Raghu Nath Singh v. Mahabir Prasad*, 23 A. L. J. 401=1925 A. I. R. All. 439=6 L. R. Rev. 126=11 R. and Cr. L. J. 148=87 I. C. 558=1925 R. C. 137=8 R. D. 427; *Bisheshar Singh v. Shankar*, V U. D. 403; *Drigpali v. Hajira*, III U. D. 236; *Munshi v. Muhammad Ahmad Said Khan*, XIV U. D. 147=14 L. R. Rev. 310; *Raghubar Dayal v. Durga Prasad*, B. R. 2 of 1924=VI U. D. (R. R.) 34=5 L. R. Rev. (Oudh) 185.

<sup>5</sup> *Ram Chandar v. Hub Lal*, 1935 A. I. R. All. 635=1935 A. L. J. 505=XVI U. D. 219=1935 R. D. 196=155 I. C. 358; *Raghubar Dayal v. Durga Prasad*, B. R. 2 of 1924=1924 R. C. 505.

<sup>6</sup> *Kunwar Bahadur v. Gulsher Khan*, 1937 A. L. J. 275=1937 A. I. R. All. 287=XVIII U. D. (H. C.) 10=1937 R. D. 59.

<sup>7</sup> *Bismillah Begam v. Chedda Singh*, III U. D. 526.

<sup>8</sup> *Jagan Nath v. Bhikam Singh*, 1935 A. I. R. All. 1047=1935 A. L. J. 1233=1935 R. D. 516=1935 A. W. R. 1275=XVI U. D. 659.



If the land was occupancy and held on rent, the grove-holder will on its ceasing to be grove-land, become a hereditary tenant, not liable to ejectment.<sup>1</sup>

Where a grove was planted on *sir*, and the proprietary rights in the land were sold, the grove-land became exproprietary land; and if the tenant elected to be treated as an exproprietary tenant, his heirs cannot claim grove-holder's rights.<sup>2</sup>

On transfer of proprietary right in *sir* land on which a grove stands, the right to the possession of the trees and their fruit remains with the transferor, unless he relinquishes this portion or the whole of his exproprietary rights.<sup>3</sup>

A plot of land, which was entered as occupancy tenancy land but was never cultivated, was converted into a grove. The grove disappeared and the tenant did not assert his rights as occupancy tenant, but acquiesced in the land being given to contractors for brick-kiln purposes. It was held that in the absence of a custom as to the rights of groveholders and in the circumstances of the case, the tenant could not reassert his occupancy rights.<sup>4</sup>

Where the rights of the holder of a grove planted on occupancy land have been extinguished by transfer in execution of a decree, he cannot hope to remain on in the position of a dormant occupancy tenant in the expectation that his rights would revive should the grove at some remote future date be cut down.<sup>5</sup> On disappearance of the grove, clause (a) applies.<sup>6</sup> He cannot prescribe for title even though he pays no rent.<sup>7</sup>

This seems to be the right view, more so if no proof has been tendered that the planter had acquired occupancy rights before the planting of the grove.<sup>8</sup>

If the trees planted as a grove on ordinary tenancy land are young and of recent origin, and there are no circumstances to indicate the landholder's acquiescence or consent, the presumption will not arise and the holder will continue a tenant.<sup>9</sup> *Secus* if the trees are of long standing

<sup>1</sup> *Bhagwant v. Gauri Ganesh*, XX U. D. 147—1939 R. D. 57.

<sup>2</sup> *Hanuman Prasad Narain Singh v. Nakshed Singh*, 12 L. R. Rev. 101=XII U. D. 97=15 R. D. 300.

<sup>3</sup> *Fitrat Husain v. Liaqat Ali*, 1939 A. L. J. 281 (F. B.)=1939 R. D. 189.

<sup>4</sup> *Bhagwati Prasad v. Abid Ali Khan*, 12 L. R. Rev. 97=XIII U. D. 126.

<sup>5</sup> *Govind Ram v. Mukhan Lal*, 14 L. R. Rev. 27=XIV U. D. 13.

<sup>6</sup> *Risal v. Ghasita*, XV U. D. 233=15 L. R. Rev. 283; *Barkat-ullah v. Bilaso*, XV U. D. 470=15 L. R. Rev. 711.

<sup>7</sup> *Fakhruddin Husain v. Abdul Wahid*, XIX U. D. (H. C.) 49.

<sup>8</sup> *Tota Ram v. Harish Mukhi*, XIV U. D. 419=14 L. R. Rev. 100.

<sup>9</sup> *Baldeo v. Harnandan*, II U. D. 123=2 R. and Cr. L. J. 266 and be entitled to enjoy the trees but not to cut them; *Abdul Asis v. Bhajan*, 1927 A. I. R. All. 176=8

1 F. T. v. 72=1427 F. C. 12=VIII U. D. (H. C.) 70=98 I. C. 1058=11 R. D. 13.

and must have taken years to grow and there is not objection on the landholder's part.<sup>1</sup>

**207.** A grove-holder may make any improvement which a hereditary tenant may make and the provisions of section 65, sections 68 to 70, sections 72 to 79, shall apply to him as if he were a hereditary tenant.

Right of grove-holder  
to make improvement

This is new.

**208.** The provisions of Chapter XIV shall apply to orders and decrees passed under this Chapter in respect of appeals, review and revision as if the grove-holder were a tenant.

Appeals

This is new and makes clear the jurisdictions of revenue and civil courts in respect of grove-land.

## CHAPTER XI

### THEKADARS

**209.** The farm or lease of a thekadar is called a " theka " the person who grants it, the " lessor " and the area to which it relates, the " theka area ".

Definition of thekadar,  
etc.

This reproduces sub-section (2) of section 199 of the Act of 1926.

**210.** A theka may be made only by a written instrument executed by the lessor and shall be deemed to be a lease for agricultural purposes within the meaning of section 117 of the Transfer of Property Act, 1882.

Method of granting  
theke.

1. This reproduces section 200 of the Act of 1926, substituting " lessor " for " landlord," and adding " and shall be deemed...Act, 1882," which is reproduction of section 219 (2) of that Act. The substitution does not mean that rights other than proprietary can be the subject of a *theke*, for that would militate against the definition contained in section 3 (24). Section 3 (10) of the Oudh Act included a *thekadar* amongst tenants for certain purposes.

2. A *kabuliat* is not a *thekaname* executed by the landlord<sup>2</sup> If the person who passed the *kabuliat* enters upon cultivatory occupation of

<sup>1</sup> *Rabi Partab Singh v. Khemt*, V U. D. 479—9 R. and Cr. L J 258—4 L. R. Rev. 252—1923 R. C 30—7 R. D 279; *Jalesar v. Raj Mangal*, 43 All. 606—19 A. L. J. 616—IV U. D. 726; *Chakauri v. Sat Narain Pal Singh*, IV U. D. 449; *Dularey v. Bhima*, IV U. D. 590—2 L. R. Rev. 67—5 R. D. 353; *Partab Singh v. Ram Charan*, 12 R. and Cr. L. J 204—1926 R. C 134—VI U. D. 300—7 L. R. Rev. 170; *Dildar v. Gokul Das*, 12 R. and Cr. L. J 198—1926 R. C. 217.

<sup>2</sup> *Radhey Mohan Lal v. Muhammad Usman Khan*, XVII U. D. 102—1936 R. D. 133.

certain plots and allows his son to cultivate other plots, the landlord should sue both under section 180 after the termination of the *kabuliat* period.<sup>1</sup>

Without ejecting an existing *thekadar*, *theke* cannot be given to another.<sup>2</sup> Since a *theke* comes under section 117, T. P. A., it would be governed by that section and the provisions of the Transfer of Property Act will not apply to it.

211. (1) Except as otherwise provided by the terms of his *theke* a *thekadar* may exercise during the period and to the extent of his *theke* all the rights of the lessor under this Act, except—

Rights of lessor which  
*thekadar* may exercise.

- (a) the right to sue for enhancement of rent ;
- (b) the right to sue a rent-free grantee or a grantee holding at a favourable rate of rent under the provisions of Chapter IX.

(2) The rights mentioned in clauses (a) and (b) of sub-section (1) may be exercised by the *thekadar* only if they are conferred expressly by the terms of the *theke*.

(3) Rights which may be exercised by a *thekadar* under the foregoing sub-sections shall not be exercised by the lessor during the period of the *theke*.

1. This section reproduces some of the parts of section 201 of the Agra Act of 1926, dropping clauses (b), (c) and (d) thereof, and the words "under section 53" in clause (a). Sub-section (2) is a positive form of the assertion in sub-section (2) of section 201 of the Act of 1926.

2. The interest of a *thekadar* is a holding, see section 3 (7), and he is the landholder of the actual cultivators, see note 24 (XIII) to section 3 at p. 51 *ante*.

A *thekadar* may settle tenants on the land in the ordinary course of management and the tenant so settled will become a tenant of the proprietor.<sup>3</sup>

A *thekadar* or assignee of rents and profits may collect rents from sitting tenants who have executed leases in his favour admitting themselves to be tenants, but if the tenants have been induced to execute leases at increased rents, the agreement is not binding in respect of the rent, and they are only liable for arrears at the rate at which the rent stood at the date of the *theke*.<sup>4</sup>

If a *thekadar*, who has presumably all rights of letting land, admits during the period of his *theke* a person as tenant even at an inadequate

<sup>1</sup> *Id*

<sup>2</sup> *Muhammad Amir Ali Khan v. Asa Ram*, XV U. D. 73—15 L. R. Rev. 449.

<sup>3</sup> *Lachman Prasad v. Ram Sahai*, XVI U. D. 238.

<sup>4</sup> *Ram Adhar v. Shri Hanumanji*, XVII U. D. 318.

rent because of relationship to the *thekadar*, the contract of tenant is in the absence of fraud binding on the zamindar.<sup>1</sup>

This view has not been accepted in a later case where a lessee from a *thekadar* at an uneconomic rate of rent, the lessee being a friend or relation, was held liable to be treated as a trespasser by the zamindar.<sup>2</sup>

A *thekadar* could not grant in Agra, a lease to tenant for a term exceeding seven years, or exceeding the unexpired portion of his *theka*, all these restrictions will disappear now.

In Oudh it was held that a lease granted by a *thekadar* of land in his *theka* expired with the *theka* and thereafter the lessee became a trespasser *vis a vis* the zamindar.<sup>3</sup>

If the *thekadar* had full powers of the owner and in the exercise of those powers did certain acts in the ordinary course of zamindari management and those acts resulted in the courts deciding on their own initiative that a tenant had acquired occupancy rights (which rights he could not in the ordinary way confer), the decision was held to be binding on the zamindar.<sup>4</sup>

A *thekadar* has all the powers of his lessor, except those mentioned in clauses (a) and (b) as modified by sub-section (2). Powers mentioned in clauses (a) and (b) may however, be conferred by the *theka* on a *thekadar*. The lessor cannot during the continuance of the *theka* exercise any of his powers, except those mentioned in clauses (a) and (b) and not even any of these if the *thekadar* is authorised to exercise them. He cannot acquire any right which an owner cannot. He may cultivate land but cannot acquire tenancy rights over it, see under note 24 to section 3, *ante*.

A *thekadar* may let in or admit a tenant.<sup>5</sup> Where, after the death heirless of an occupancy tenant, *thekadar* granted receipt for rents in respect of the occupancy holding to the daughter by the deceased and to her minor son (who could not have shared with the latter in cultivation), the court may properly infer an admission to the tenancy by *thekadar*.<sup>6</sup>

The power to admit tenants expires with the term of the *theka* although the *thekadar* may not have been formally ejected.<sup>7</sup>

<sup>1</sup> *Mahadeo Singh v. Kulwanta*, XVII U. D. 152, 179—1936 R. D. 187. See however, *Manmohan Das v. Dwarka Nath*, XVI U. D. 472.

<sup>2</sup> *Nanhoo Singh v. Manmohan Das*, XVIII U. D. 235—1937 R. D. 33.

<sup>3</sup> *Krishna Kumari Devi v. Tribhuvan Dat*, 1929 A. I. B. Oudh 12—IX U. D. (H. C.) 269—X U. D. (H. C.) 189—10 L. R. Rev. 216—5 O. W. N. 705—12 R. D. 380; *Jagatjit Singh v. Rupal Murai*, Rent Act Ruling No. 52; *Chattar Pal Singh v. Bhadeshwar Prasad*, XI U. D. (H. C.) 61. *Contra Gursaran v. Jagan Nath*, 1929 A. I. R. Oudh 240—5 O. W. N. 42—X U. D. (H. C.) 37—10 L. R. Rev. 19; *Lal v. Uday Partab Udeya Singh*, B. R. 9 of 1892.

<sup>4</sup> *Niaz Muhammad Khan v. Sri Thakurji Maharaj*, X U. D. 107—10 L. R. Rev. 166—13 R. D. 354.

<sup>5</sup> See under note 24 to s. 3 *ante*, and under note 10 to s. 29 *ante*.

<sup>6</sup> *Parbhu Narain Singh v. Ganeshi*, 12 L. R. Rev. 357—XIII U. D. 94.

<sup>7</sup> *Ram Pyare v. Ram Bharose*, XVII U. D. 66.

In some cases it was laid down that the power to eject was in the *thekadar* unless it was not reserved to the lessor or the latter's consent had to be obtained.<sup>1</sup> The latter part is not true now.

If a *thekadar* could not issue a notice of ejectment without the consent of the lessor he had to get the consent before issuing a valid notice under section 175,<sup>2</sup> and the lessor could not issue such a notice without the *thekadar's* signatures.<sup>3</sup>

If the *thekadar* had no power to eject,<sup>4</sup> or such powers were withheld from him,<sup>5</sup> the proprietor could eject.<sup>6</sup> This is no longer law.

A *thekadar* has no power to sue for enhancement of rent unless he is expressly empowered by the *theka*. Hence as the proprietor does not derive title from his *thekadar*, a decision between the latter and a tenant does not bind the proprietor.<sup>7</sup>

Where a *thekadar* has before the expiration of the term of his *theka* surrendered it with the consent of his lessor, the latter may sue for arrears of rent falling due after the date of the surrender.<sup>8</sup>

3. Sub-section (2)—Any of the powers mentioned in sub-section (1) can be exercised by a *thekadar* if the terms of the *theka* authorise him to.

4. Sub-section (3).—For instance the lessor cannot eject a tenant. Before the Act, the rule was that a lessor could not sue to eject during the continuance of the *theka*, unless the power was specially reserved to him and denied to the *thekadar*.<sup>9</sup>

212. (J) A lessor may notwithstanding the *theka*, make any improvement in or affecting the *theka* area which he would otherwise be entitled to make as landholder under the provisions of section 71.

<sup>1</sup> So held in *Khudai Khan v. Jagat Narain*, 1 U. P. L. R. (B. R.) 42=6 Rev. and Cr. L. J. 16=54 I. C. 569=III U. D. 551=4 R. D. 350, *Ram Din v. Sita Ram*, 2 U. P. L. R. (B. R.) 37=6 Rev. and Cr. L. J. 142; *Babu Ram v. Munna Lal*, IV U. D. 249.

<sup>2</sup> *Parmeshar Dat v. Bisheswar*, 4 O. L. J. 156=40 I. C. 146=III U. D. 604=3 R. and Cr. L. J. 189=4 R. D. 396.

<sup>3</sup> *Bhagwati Prasad Singh v. Baldeo*, IV U. D. 258=1 L. R. Rev. 137=6 R. D. 455; *Bhagwati Prasad Singh v. Suraj Bali*, 1 O. L. J. 579=26 I. C. 463=I U. D. 221.

<sup>4</sup> *Bhagwati Prasad v. Ajodhia Estate*, II U. D. 393.

<sup>5</sup> *Jagan Nath v. Maharaja of Balrampur*, II U. D. 508.

<sup>6</sup> *Jagan Nath v. Maharaja of Balrampur*, II U. D. 508.

<sup>7</sup> *Partab v. Ajodhia Estate*, 1 L. R. Rev. 26=III U. D. 654=6 R. and Cr. L. J. 59=7 O. L. J. 611=58 I. C. 990=4 R. D. 443.

<sup>8</sup> *Surja Pal Singh v. Bunde Ali Khan*, 1938 A. L. J. 93=XIX U. D. (H. C.) 26.

<sup>9</sup> *Hashim Ali Khan v. Mordhuj*, III U. D. 278; *Bhagwati Prasad Singh v. Baldeo*, IV U. D. 258; *Chet Ram v. Kashi Prasad*, V U. D. 382=9 Rev. and Cr. L. J. 181=4 L. R. Rev. 153=1923 R. C. 63=3 R. D. 44; *Balmakund v. Ibrahim*, 9 L. R. Rev. 144=VIII U. D. 47=11 R. D. 211.

(2) A thekadar shall not without the written consent of the lessor make or grant permission for the making of any improvement.

Section 71 imposes the condition of written consent of the lessee tenant, except when the improvement contemplated is a well. The first proviso to section 71 (1) will hold good. In case of refusal to consent by the *thekadar*, section 71 (2) will come in.

Sub-section (2) of this section limits a *thekadar's* power to make improvements or grant permission to tenant to make improvements by making the lessor's consent necessary.

213. (1) The interest of a thekadar—

Restrictions on the transfer of, and on succession to, thekas.

(a) shall not be transferable in execution of a decree of a civil or revenue court ;

(b) except as provided by the terms of the theka, shall not be otherwise transferable or be heritable.

(2) Where a thekadar's interest is heritable, it shall devolve according to the personal law applicable to him.

1. This section reproduces in effect section 203 of the Agra Act of 1926, but makes a *thekadar's* interest absolutely unsaleable in execution of a decree and intransferable or uninheritable except as otherwise provided by the terms of the *theka*. Clause (b) of section 203 is omitted.

2. The terms of a *theka* may however provide otherwise and give a power of transfer or make the interest heritable.<sup>1</sup> Since a permanent lessee of proprietary rights is a *thekadar*, his interest is not transferable.<sup>2</sup>

See notes to section 33 as to meaning of transfers and intransferable.<sup>3</sup>

Since the interest of a *thekadar* is intransferable, the trees on the land within the *theka* area are also intransferable,<sup>4</sup> and so is the right to collect rent.<sup>5</sup>

The interest of a *thekadar* being intransferable, he cannot grant a sub-*theka* of any portion of the land under the *theka*. But he may let specified plots of land, on which a question may arise whether this is not a transfer by a sub-*theka*. It is a question of interpretation of the lease in each case, to which the use of the word *theka* gives little help. If it is a lease of the ordinary description, it will be construed as an ordinary

<sup>1</sup> As in *Ajodhia Kalwar v. Balkiran*, 1935 A. L. J. 1—1935 A. I. R. All. 93—1934 A. L. J. 1075—XV U. D. (H. C.) 306—152 I. C. 925—16 L. R. Rev. 89.

<sup>2</sup> See *Ballabh Das v. Murat Narain*, 48 All. 585—24 A. L. J. 489—11 Rev. and Cr. L. J. 193—12 Rev. and Cr. L. J. 123—1926 R. C. 226.

<sup>3</sup> Cl. (a) overrides *Lurkhur v. Ram Baran*, IV U. D. 824—6 R. D. 405.

<sup>4</sup> This overrides *Kirtharathgir v. Raghunandan*, 1 L. R. Rev. 129—2 U. P. L. B. (H. C.) 283—57 I. C. 198.

<sup>5</sup> *Sikhar Chand v. Shidha*, X U. D. 218.

agricultural lease and not as a sub-*theka*.<sup>1</sup> He cannot bequeath his interest by will.<sup>2</sup>

Sub-section (2) gives effect to the law as it stood before the Act. Personal law governs the succession to *thekadars*, where they possess heritable interests. On failure of heirs according to the personal law, *theka* will not escheat to the crown but will revert to the lessor.

214. (1) A thekadar shall be liable to ejectment on one or more of the following grounds, namely :  
Grounds of ejectment.

- (a) on the ground that a decree against him for arrears of rent remains unsatisfied ;
- (b) on the ground of any act or omission prejudicial to the rights of the lessor or inconsistent with the purpose of the *theka* ;
- (c) on the ground that he, or any sub-*thekadar* under him, has broken a condition on breach of which he is by the terms of his *theka* liable to be ejected ;
- (d) on the ground that the term of the *theka* has expired or will expire at or before the end of the current agricultural year ;
- (e) in the case of a *theka* from year to year, on the expiry of a notice to determine the *theka*, provided that not less than six months' notice ending on any date in the last year of the *thekadar's* tenure shall be given ;
- (f) except in the case of *thekas* granted before the commencement of this Act, on the ground that a period of ten years has elapsed since the *theka* began, or on the ground that the period of the settlement of the local area in which the *theka* area is situated has come to an end.

(2) Notwithstanding anything in clauses (b) and (c) of sub-section (1) no *thekadar* shall be ejected for non-payment of rent otherwise than in accordance with clause (a) of that sub-section.

1. This reproduces to a large extent section 205 of the *Agra Act* of 1926. Clauses (a), (b), (c) and (e) and sub-section (2) are the same as those of section 205. Clause (d) is the first part of clause (d) of section 205. Clause (f) is the remaining part of clause (d) of section 205, substituting "ten years" for "thirty years" and "began" for "was granted" and adding "or on the ground that the period.....come to an end," which

<sup>1</sup> *Muhammad Baksh v. Pabitra Pandain*, 12 L. R. Rev. 55.

<sup>2</sup> *Param Hans Singh v. Kalka Singh*, XX U. D. 258—1939 R. D. 306.

makes a *theka* terminate with the end of the period of the settlement current at the date of the *theka* (or perhaps at the date of the Act also). In Oudh section 64 stood in place of clause (d).

Clauses (a) to (c) are similar to clauses (a) to (c) of section 57 of Act II of 1901 and to section 79 and clauses (a) and (b) of section 84 of the Act of 1926. Clause (d) first part is similar to section 58 (b) of Act II of 1901 and part of section 175 of the present Act. See notes thereto.

Clause (b) corresponds to section 172(a), clause (c) to section 172(b); clauses (d) and (e) to section 175.

The life of a *theka* granted after the Act is 10 years from the date of the grant, or the balance of the period of the current settlement.

2. Clause (e) is somewhat similar to section 58 (a) of Act II of 1901 and part of section 175 of this Act. Six months' notice should be given for the termination of a *theka* from year to year. This provision is similar to the one contained in section 106 of the Transfer of Property Act. The six months' notice may end on any date in the last year of the *thekadar's* tenure. A notice to quit on a date previous to the end of the year is not sufficient.<sup>1</sup>

*Year* does not necessarily mean an agricultural year. If a *theka* commenced in the middle of an agricultural year, say on the first of February, the year will expire on the 31st of January, and the notice must be given before the 30th of June preceding. Nor does it necessarily mean a year according to the Gregorian Calendar. It may be a year according to the Hindu or Mahomedan Calendar, as agreed upon; and in such case the six months must be according to such calendar.<sup>2</sup>

Whether a *theka* is from year to year depends on its terms; a lease for an indefinite term at a yearly rent is one from year to year.<sup>3</sup> Where on the same day, a mortgage is executed in favour of A and a *theka* in favour of her son, and the son is not ejected on the expiration of the *theka*, the two from one transaction, i. e. a mortgage with possession, and the son cannot be ejected until the mortgage is paid up.<sup>4</sup> A *thekadar* holding over after the expiration of his term is a tenant by sufferance but the conduct of the landlord may constitute him a *thekadar* from year to year.

The notice must be in writing and signed by the lessor or someone authorised by him.<sup>5</sup> In a case of several lessors, all should sign or have it signed on their behalf; when they are members of a joint Hindu family all must join.<sup>6</sup> A notice signed by some of several landlords is not invalid so far as the *thekadar* is concerned; he may act upon it

<sup>1</sup> *Hemanginee v. Sri Gobinda*, 26 Cal. 203; see also *Seoti v. Jagan Nath Prasad*, 10 A. L. J. 854.

<sup>2</sup> *Hari Das v. Upendra Narain*, 16 C. L. J. 74=16 I. C. 937; *Raj Behary v. Kailash Nath*, 22 C. L. J. 78=30 I. C. 887.

<sup>3</sup> *Chandi Charan v. Ashutosh*, 53 Cal. 95.

<sup>4</sup> *Muneshwar v. Ureha*, XX U. D. 122=1938 R. D. 852.

<sup>5</sup> *Mahendra v. Bishwa Nath*, 29 Cal. p. 235.

<sup>6</sup> *Bulaji v. Gopal*, 3 B. N. 23; *Reasat v. Chowar*, 7 Cal. 470.



and vacate<sup>1</sup> but the landlords cannot sue to eject on the basis of such a notice.<sup>2</sup>

A notice must be tendered or delivered at his residence, to the lessee personally, if practicable; by affixing it to a conspicuous part of his house; or by sending it by registered post.<sup>3</sup>

The notice must convey sufficient information to the lessee that he must vacate by the end of the year.<sup>4</sup> It need not be accurate or consistent. It must convey to the lessee the intention of the lessor to terminate the contract of theka at the end of the year.<sup>5</sup>

3. A suit to eject a thekadar under this section may be brought in any month of the year and not necessarily in July, August and September.<sup>6</sup>

A thekadar and a tenant admitted by him cannot be ejected by one and the same suit, as a thekadar has the right to admit tenants on the estate.<sup>7</sup>

Collateral relations put in possession by a thekadar can on the expiry of the theka be ejected as trespassers.<sup>8</sup>

4. Sub-section (2) expresses the law as it stood before the Act.<sup>9</sup> A condition of re-entry in a theka is void.<sup>10</sup>

In Oudh, a theka could expire otherwise than by efflux of time, *e. g.*, breach of condition with a condition of re-entry thereon.<sup>11</sup>

<sup>1</sup> *Doe v. Chaplin*, 3 Taunt 10.

<sup>2</sup> *Bhikaree v. Dhakeshwar*, 25 Cal. 807; *Subodini v. Durga Charan*, 28 Cal. 218.

<sup>3</sup> See *Harihar v. Ram Sashi*, 46 Cal. 458, (P. C.); *Subodini v. Durga Charan*, 28 Cal. 218.

<sup>4</sup> *Harihar v. Ram Sashi*, 46 Cal. 458, (P. C.)

<sup>5</sup> *Bradley v. Atkinson*, 7 All. 899 (F. B.)

<sup>6</sup> *Ram Kishan v. Peare Lal*, XI U. D. 211—15 R. D. 49.

<sup>7</sup> *Lachman Prasad v. Ramsahai*, XVI U. D. 238.

<sup>8</sup> *Masuda v. Azimulla*, 1938 A. L. J. (B. R.) 102—XIX U. D. 209—1938 R. D. 621.

<sup>9</sup> *Tara Singh v. Khushal*, 3 A. L. J. 319; *Kuber Das v. Ram Din*, 45 All. 5—20 A. L. J. 769—1923 A. L. J. All. 14—77 I. C. 927—1922 R. C. 335—V U. D. (H. C.) 85—3 R. and Cr. L. J. 269—7 R. D. 185; *Mohra v. Baldeo*, B. R. 5 of 1891.

<sup>10</sup> *Ghurey v. Sewa Ram*, VI U. D. 99—5 L. R. Rev. 125—1924 R. C. 127—9 R. D. 513.

<sup>11</sup> *Baldeo Prasad v. Muh Ishaq*, XII U. D. 292—12 L. R. Rev. 339—15 R. D. 528; *Deo Dat v. Baleshar Singh*, B. R. 1 of 1934—XV U. D. (B. R.) 7—15 L. R. Rev. 160.

**215.** (1) When a lessor desires to eject a thekadar on the ground specified in clause (a) of sub-section (1) of section 214 he shall apply for execution of the decree in accordance with the provisions of section 170.

Procedure of ejectment for non-payment of decreed arrears.

(2) When a lessor desires to eject a thekadar on any other ground specified in sub-section (1) of section 214 he shall proceed by suit.

(3) The provisions of section 174 shall apply to a thekadar who is liable to ejectment under the provisions of clause (b) or clause (c) of sub-section (1) of section 214 as they apply to a tenant and if a decree for ejectment is passed under the provisions of either of these clauses the provisions of sub-section (2) of section 173 shall apply to such decree as they apply to a decree against a tenant.

1. It reproduces and consolidates in effect sections 206, 207 and 209 of the Agra Act of 1926.

Sub-section (3) corresponds to section 209 of the Act of 1926.

2. Suit is the only remedy for ejectment under sub-section (2).<sup>1</sup>

A *theka* for ten years of a *Muslim waqf* property was voidable after 3 years, on the expiration of which the *thekadar* could not be said to hold without consent within the meaning of section 180.<sup>2</sup>

3. Section 174 which confers an alternative right to sue for compensation, injunction or repair of damage applies to a *thekadar* who is liable to ejectment for committing any act mentioned in sub-section (1) (b) of section 214 or a breach of condition which confers a right of re-entry. See notes to section 174. Should the lessor elect to sue for ejectment and not for compensation etc. and obtain a decree for ejectment, section 173 will apply. See notes to that section.

**216.** In a suit for the ejectment of a thekadar any sub-thekadar may be joined as a party to the suit, and shall be so joined where the suit is on the ground of any act or omission of such sub-thekadar or to which such sub-thekadar was a party.

Joinder of sub-thekadar as defendant.

It reproduces section 208 of the Agra Act of 1926, and is similar to section 123 (2) of this Act.

<sup>1</sup> *Lachman Prasad v. Ram Sahai*, XVI U. D. 238; *Muh. Amir Ali Khan v. Asa Ram*, XV U. D. 273=15 L. R. Rev. 449. The contrary view in *Gauri Shankar Singh v. Ashraf Khan*, XII U. D. 33=15 R. D. 230 is bad law.

<sup>2</sup> *Gauri Shankar Singh v. Ashraf Khan*, XII U. D. 33.

**217.** (1) A thekadar who has been wrongfully ejected from the whole or any part of the theka area, or wrongfully prevented from exercising any of his rights as thekadar, by the lessor or any person claiming under or as agent of the lessor may sue for any or all of the following remedies :

- Remedies for wrongful  
ejection.
- (a) recovery of possession ;
  - (b) an injunction ;
  - (c) compensation for such wrongful dispossession or unlawful interference ;
  - (d) compensation for an improvement lawfully made by him.

(2) The provisions of sub-sections (2), (3) and (4) of section 183 and of sections 184 to 186 shall apply to a thekadar in the same way and to the same extent as they apply to a tenant.

1. This reproduces in effect section 212 of the Act of 1926, and has an effect similar to section 183 of this Act, *q. v.*

2. Not only dispossession but disturbance of the rights of a *thekadar* gives a right of suit. The remedies are the same as under section 183 and injunction. The fact that the mutation court refused to recognize the position of the plaintiff as *thekadar* does not take a suit by the *thekadar* to recover possession from the landlord out of section 217 *i. e.* out of the exclusive jurisdiction of Revenue Courts.<sup>1</sup>

Where on failure to obtain possession under a lease passed for money paid down, the lessee sues for recovery of the consideration and not for possession, the suit is not obnoxious to section 242 and lies in a Civil Court.<sup>2</sup>

**218.** A thekadar may at any time with the consent of the lessor surrender his interest in the theka.

Surrender.

It reproduces section 213 of the Act of 1926 and is similar to section 80 of this Act, *q. v.*

**219.** The provisions of sections 73 to 75, section 79, sections 90 and 91, sections 123 to 125, section 129, sub-sections (1) and (2) of section 130, sections 131 to 133, sections 137 to 140, sections 146 and 147, section 149, section 150, section 154, section 157, section 159, section 181, sections 236 to 238 and section 240 shall apply to a thekadar in the

Application to theka-  
dars of certain sections  
relating to tenants.

<sup>1</sup> *Ramji Mal v. Deva Prasad*, 55 All. 148—1933 A. I. R. All 43—1933 A. L. J. 10—XIV U. D. (H. C.) 22.

<sup>2</sup> *Muh Anis v. Iqbal Hussain*, 1937 A. L. J. 1202—1938 A. I. R. All. 29—1938 B. D. 88.

same way and to the same extent as they apply to a hereditary tenant and the provisions of section 148 shall apply to an arrear of rent due by a thekadar only in so far as they refer to the recovery of rent by suit.

1. This corresponds to section 216 and section 219 of the Agra Act of 1926.

2. Sections 73 to 75 refer to compensation for improvements.

Section 79 refers to settlement of disputes about improvements

Sections 90 and 91 relate to premiums and cesses.

Section 129 relates to presumption as to payments being towards rent.

Section 130 sub sections (1) and (2) declare that payments towards rent should not be appropriated towards time-barred instalments and that appropriation by payer should stand

Sections 131, 132, relate to the mode of making payments and admissibility in evidence of postal receipts of payment.

Section 133 (1) confers a right on tenant to demand written receipt for payment.

Sections 137 to 140 relate to deposit of rent in court.

Section 146 describes when rent is in arrear and provides for payment of interest on such arrear.

Section 147 prevents arrest under rent decrees

Section 150 shows what claims may be joined in arrears suits.

Section 154 refers to cases where there is a general refusal to pay rent.

Section 157 confines the reasons for ejectment to those mentioned in the Act

Section 159 relates to payment of compensation for improvement on ejectment.

Section 181 relates to the mode of execution of ejectment decrees.

Sections 236 to 238 and 240 relate to compensation and penalties.

As section 153 is not mentioned, it cannot be used against a thekadar.<sup>1</sup>

3. The word "all" which occurred before *thekadar* in section 219 of the Act of 1926, has been replaced by "a", but the change is not material. The section applies to *thekadars*, whether past, present or future as in the case cited in the foot-note.<sup>2</sup>

<sup>1</sup> *Ram Nath Singh v. Secretary of State*, XX U. D. 80=1938 R. D. 796.

<sup>2</sup> *Amina Khatun v. Beni Ram*, 1939 A. L. J. 73=1939 A. I. R. All. 209=1939 R. D. 473.

**220.** The provisions of sections 245 and 246 governing the exercise by two or more co-sharers of their rights against a common tenant shall be applicable also to the exercise of such right against a common thekadar.

This reproduces in effect section 217 of the Act of 1926.

In the case of two *thekadars*, one of whom collects, the other can get his share of the actual collection only unless he establishes misconduct or negligence.<sup>1</sup>

**221.** If a thekadar remains in possession after the expiry of his theka, and the lessor accepts rent from him or otherwise assents to his continuing in possession, the theka shall, in the absence of an agreement to the contrary, be deemed to have been renewed from year to year.

1 This reproduces section 218 of the Act of 1926.

2. There must be acceptance of rent to constitute a fresh tenancy.

If no new tenancy has been agreed upon, but the thekadar after the expiry of his theka continues to occupy some of the land comprised in his theka either by himself or through relations, has the landholder to proceed under section 180<sup>2</sup> or under section 215 (2) read with section 214 (d)? In an Oudh case, section 127 of the Rent Act, corresponding to section 180 of this Act, was held to provide the adequate remedy.<sup>3</sup> But the Oudh Rent Act has no provisions corresponding to this chapter, and the principle of the ruling does not necessarily apply. It is submitted it does not; and section 215 (2) provides the remedy. The case is no different from one where a lessee of an area refuses to give up possession of a part of it after the termination of his lease, in which case section 175 would provide the remedy.

The Oudh view was adopted in *Baldeo v. Shumbhu Nath*.<sup>4</sup>

**222.** Every suit or application brought by a thekadar against the lessor, or against a thekadar by the lessor, under the provisions of this Chapter, which is of the same nature as any suit or application specified in the Fourth Schedule, which may be brought by a tenant against a landholder or by a landholder against a tenant, shall be deemed to be included in that Schedule under the same serial number as such similar suit or application.

<sup>1</sup> *Ram Padarath v. Ganga Prasad*, 1927 A. I. R. Oudh 90=VIII U. D. (H. C) 22=8 L. R. Rev. 31=1926 R. C. 577=3 O. W. N. 271 (supp)=10 R. D. 37

<sup>2</sup> *Masuda v. Asimulla*, 1938 A. L. J. (B. R.) 102=XIX U. D. 209

<sup>3</sup> *Devan Singh v. Bishushar*, 4 O. L. J. 448=3 R. and Cr. L. J. 276=42 I. C. 41

<sup>4</sup> 14 L. R. Rev. 223=XIV U. D. 97.

1. This reproduces section 220 of the Act of 1926.

Schedule IV applies to suits to or applications by or against thekadar. Does it include a suit under section 59? It was held before 1926 that it did.<sup>1</sup> Under this Act, the matter is not clear. A thekadar is a tenant only for certain purposes and remedies under sections 59, 61 are not mentioned in this chapter.

2. Where on the expiration of a theka the parties agree that the thekadar should continue in possession for one year as mortgagee of proprietary rights, a suit to eject him after the end of the year is not as against a thekadar but as against a mortgagee, and lies in a Civil Court.<sup>2</sup>

## CHAPTER XII.

### ARREARS OF REVENUE, PROFITS, ETC.

**223.** The word "co-sharer" shall for the purposes of this Chapter, include a thekadar who is in possession of the property leased to him.

Extent to which the term "co-sharer" applies to thekadar.

This is new and renders useless the rulings noted below which held that a thekadar was or was not in the position of a co-sharer, or his assign for the purposes of this chapter<sup>3</sup> Now he will be if he is in possession of the property leased to him. It had been held in *Udit Nurain v Mubarak Ali*,<sup>4</sup> that a thekadar was a co-sharer.

**224.** A lambardar may sue a co-sharer for arrears of revenue or rent payable through such lambardar by such co-sharer and for village expenses and other dues for which such co-sharer may be liable to the lambardar.

Suit for arrears of revenue, etc., by lambardar.

1. This reproduces in effect section 221 of the Act of 1926, which reproduced section 159 of the Act of 1901 and corresponded to section 93 (g) of the Acts of 1873 and 1881. and section 1 (i) of Act XIV of 1863. In Oudh, there was no corresponding provision, but section 108 (16) of the Oudh Rent Act related to a suit for the purposes of this section and corresponded to items Nos. 9 and 10 of Group A of the Fourth Schedule.

2. Lambardar also includes his heirs, legal representatives, executors, administrators and assigns. A purchaser of the lambardar's interest to whom the right to recover revenue already paid has been assigned may sue to recover in the Revenue Court, and not in a Civil Court.

<sup>1</sup> *Chitay Lal v. Dhan Desi*, III U. D. 285=4 R. D. 111=5 R. and Cr. L. J. 46.

<sup>2</sup> *Makund Swarup v. Kishan Chand Singh*, 1935 A. I. R. All 382=XVI U. D. 132=1935 R. D. 111.

<sup>3</sup> *Kanhaya Lal v. Panna Lal*, II U. D. 721 (not), *Puran v. Khiali Ram*, 1925 A. I. R. All 701=IV U. D. (H. C.) 270=5 L. R. Rev. 284=1924 R. C. 247, 328=86 I. C. 400=9 R. D. 329 (not), *Debi Saran Lal v. Debi Saran*, B. R. 3 of 1883 (yes), *Shirin Bai N. Javeri v. Qaisar Jehan*, S. A. 173 of 1929 decided on 16-2-1932.

<sup>4</sup> 51 All. 359 (P. C.)=1929 A. I. R. P. C. 75=10 L. R. Rev. 236.

Suppose a co-sharer, who is lambardar, pays revenue on account of the other co-sharers, and then ceases to be a lambardar. In a very early case it was held that he could sue the other co-sharers for contribution in the Civil and not in the Revenue Courts.<sup>1</sup> The policy of the Act seems to be against this view.<sup>2</sup> In the converse case where a co-sharer paid revenue before he became the lambardar, his suit for contribution from another co-sharer after he became a lambardar did not fall under section 108 (16) of the Oudh Act.<sup>3</sup> A lambardar who has sold all his interest is no longer a lambardar, but because his name is not removed from the record he has to pay revenue, he can recover it from the co-sharers only by a suit in a Civil Court.<sup>4</sup> Lambardar means a lambardar appointed under the Land Revenue Act and rules<sup>5</sup> although since the institution of the suit the order of appointment has been cancelled.<sup>6</sup> A *thekdār* appointed as lambardar has the rights and liabilities of one.<sup>7</sup> A lambardar who has paid<sup>8</sup> revenue or rent for his co-sharers may sue for re-imbursement.

Lambardar in an under-proprietary or pukhtadari mahal includes an under-proprietor who is the lambardar of under-proprietors and that word is not confined to superior proprietor.<sup>9</sup>

3. **Co-sharer.**—A co-sharer is a person recorded as a co-sharer for the period in suit and a proprietor out of possession cannot be a co-sharer under this section.<sup>10</sup> The holder of a *muafi* assessed to Government Revenue is a co-sharer.<sup>11</sup> Where a plot purchaser is by the sale-deed made by the vendor immune from the land revenue demand he cannot

<sup>1</sup> *Ali Ahmad v. Baldeo*, 1 A. W. N. 46.

<sup>2</sup> See *Shub Singh v. Sita Ram*, 3 A. W. N. 8; *Bhagwan Das v. Bhagwan Das*, B. R. 1 of 1892; *Kundan Lal v. Rameshar Prasad*, 14 L. R. Rev. 503=XIV U. D. 481.

<sup>3</sup> *Uma Baksh v. Ram Sahai*, 4 O. C. 261.

<sup>4</sup> *Pokh Pal v. Lal Madho Ram*, 51 All. 897=1930 A. I. R. All. 302=1929 A. L. J. 1081=117 I. C. 107=11 L. R. Rev. 39=XI U. D. (H. C.) 85=14 R. D. 36.

<sup>5</sup> *Pirithi Singh v. Ahmad Husain*, 5 O. C. 392.

<sup>6</sup> *Baldeo Singh v. Himmat Singh*, 3 O. C. 308.

<sup>7</sup> *Mithu Lal v. Chameli*, 1935 A. I. R. All. 777=XV U. D. (H. C.) 139=15 L. R. Rev. 391=155 I. C. 800.

<sup>8</sup> *Bhora Hazari Mal v. Bhora Nauranga Lal*, 1930 A. L. J. 1103=1939 A. I. R. All. 517=14 R. D. 423.

<sup>9</sup> *Hurlans Lal v. Dhirnaja Kuari*, 1936 A. I. R. Oudh 371=XVII U. D. (H. C.) 167=1936 O. W. N. 599=1936 R. D. 29=165 I. C. 42. The suit was for arrears of rent in such a village payable through the plaintiff by the defendant, a class of suits which came within the phraseology of section 108 (16) Oudh Rent Act.

<sup>10</sup> *Brij Chandra Sharma v. Ram Narain*, 1937 A. L. J. 707=1937 A. I. R. All. 618=1937 R. D. 385=XVIII U. D. (H. C.) 143.

<sup>11</sup> *Murlidhar v. Babu Ram*, 42 All. 311=18 A. L. J. 121=2 U. P. L. R. (H. C.) 41=55 I. C. 74=IV U. D. 754=6 R. and Gr. L. J. 27=6 R. D. 335.

be sued under this section, but a remedy may exist under the Resumption Chapter.<sup>1</sup> So a plot proprietor separately assessed to revenue.<sup>2</sup>

A person recorded as a sharer in a patti who only has a grove in it in lieu of his share of profits is a co-sharer liable to pay his share of the revenue.<sup>3</sup>

Assignees of Government revenue are not co-sharers with the zamindars and hence the latter cannot sue the former for their percentage of zamindari dues.<sup>4</sup> Nor is a *ganwadhdar* a co-sharer.<sup>5</sup>

The word means a person who is jointly and severally liable with other co-sharers for payment of the revenue<sup>6</sup> and includes his heirs, legal representatives, executors, administrators and assigns. *Khem Karan v. Than Singh*,<sup>7</sup> which held that the lambardar could not recover from an auction-purchaser of the interests of a co-sharer the quota of revenue paid prior to the confirmation of sale is no longer law. A mortgagee or lessee of a co-sharer is a co-sharer.<sup>8</sup>

A co-sharer who has sold his entire interest with all the rights appurtenant thereto, reserving to himself certain plots to be held *bila lagan*, is no longer a full proprietor liable to be sued under this section for arrears of revenue although his position may be that of an underproprietor.<sup>9</sup>

Where no distribution of revenue is made amongst the co-sharers, although the extent of interest of each is defined, the lambardar may sue all of them jointly for the revenue he has paid on the joint account.<sup>10</sup> A suit against a person who was a co-sharer at the date of payment by the lambardar, but who is not so at the date of institution, seems to be outside this section; he ceases to be a co-sharer from the date of the sale, and not from that of confirmation of the sale if that was by court auction<sup>11</sup> and the auction purchaser becomes a co-sharer from that date although his name is not recorded until some time after.<sup>12</sup>

<sup>1</sup> *Rajendra Prasad v. Kallua*, XVIII U. D. 8=1937 R. D. 10.

<sup>2</sup> *Umrai Kunwar v. Bijoy Bahadur*, IV U. D. 358=5 R. D. 112; *Bhure v. Habibur Rahman*, 103 I. C. 315=VIII U. D. (H. C.) 222=8 L. R. Rev. 246=1927 R. C. 270, see also *Gulzar Lal v. Munta*, I U. D. 115.

<sup>3</sup> *Sita Ram v. Kamar-ud-din*, XV U. D. (H. C.) 145=15 L. R. Rev. 430.

<sup>4</sup> *Bhagwan Das v. Kazi Imdad* B. R. 9 of 1891.

<sup>5</sup> *Ram Lakhan Singh v. Ram Nareish*, 1937 R. D. 337.

<sup>6</sup> *Murlidhar v. Babu Ram*, 18 A. L. J. 121=IV U. D. 754.

<sup>7</sup> 8 A. W. N. 278.

<sup>8</sup> *Lachman Singh v. Ghasi*, 15 All. 137=13 A. W. N. 63; *Ram Kishan v. Tonda*, B. R. 6 of 1888; *Lachman v. Tirheni*, 1924 A. L. R. All. 719=22 A. L. J. 518=79 I. C. 533=VI U. D. (H. C.) 179=5 L. R. Rev. 174=1924 R. C. 210=9 R. D. 399; *Azisunnissa v. Muhammad Saeed Khan*, 2 O. C. 64; *Lachmi Kuar v. Beni Prasad*, II U. D. 413; *Gajadhar v. Har Prasad*, 94 I. C. 693; *Sri Nath v. Najmunnissa*, 9 O. L. J. 92=66 I. C. 111; *Contra, Bhawanigir v. Dalmardan*, 3 All. 144.

<sup>9</sup> *Suraj Prasad v. Shanker Dayal*, 1936 A. I. R. Oudh 79=XVI U. D. 664=1935 O. W. N. 1209=1935 R. D. 519.

<sup>10</sup> *Munna Lal v. Kifayat-ulla*, B. R. 10 of 1884.

<sup>11</sup> *Bhaop Ram v. Kedar Singh*, XVII U. D. 23=1936 R. D. 49.

<sup>12</sup> *Shyam Lal v. Sundar Lal*, 1937 All. 706=1937 A. L. J. 769=1937 A. I. R. All. 667=XVIII U. D. (H. C.) 147=1937 R. D. 387.



The following have been held to be co-sharers :—assignee of the life interest of a Hindu widow recorded as a co-sharer<sup>1</sup>; a Hindu lady to whom property has been assigned for maintenance without any power to transfer, whose name has been recorded as a co-sharer<sup>2</sup>; the mortgagee in possession of a co-sharer<sup>3</sup>; a mortgagor until his usufructuary mortgagee gets possession and has his name recorded,<sup>4</sup> unless he becomes an exproprietary tenant on the execution of the mortgage, in which event he ceases to be a co-sharer or liable to account to the mortgagee for profits of the *sir* mortgaged.<sup>5</sup>

4. **Arrears of Revenue or rent** *e.g.*, under-proprietary rent.<sup>6</sup>—Interest on it may be awarded.<sup>7</sup>

But see *Sidha Nath v Shea Daya*<sup>8</sup> where it was held that a suit for contribution by one of several under-proprietors who had paid the whole amount of a decree for arrears of rent against all was not a suit under section 108(16) Oudh Rent Act, but was a civil suit. That enactment provided for a suit for arrears of rent.

5. **Payable**—not necessarily paid, or paid out of collection of rents. The lambardar has not to show whether he collected any rents<sup>9</sup>. If a co-sharer pays his share of the revenue into the Government treasury after payment by the lambardar and without informing the latter he is liable to pay it again to the lambardar.<sup>10</sup> The section is confined to cases where the revenue payable by a co-sharer is payable through the lambardar.

There was an arrangement between the parties that the lambardar would make collections from a certain portion of the joint estate and reconp himself for the defendant's share of the revenue. The lambardar had realised profits of that portion. He could not recover the defendant's share of the arrears of revenue by a suit under the section, and it was not necessary for the defendant to sue under section 230 for accounts of the receipt of such profit.<sup>11</sup>

<sup>1</sup> *Thakur Prasad Singh v Adya Prasad Singh*, 24 O. C. 399=66 I. C. 2.

<sup>2</sup> *Dishwa Nath v Ram Nath*, 8 O. L. J. 339=63 I. C. 187.

<sup>3</sup> *Sadika v. Akbar Singh*, 2 O. C. 299; *Hanuman Dei v Ram Bisal*, 14 I. C. 260.

<sup>4</sup> *Balkaran v. Har Bilas*, 4 O. W. N. 950=106 I. C. 299=1927 A. I. R. Oudh 504=11 R. D. 456.

<sup>5</sup> *Pahlad Singh v. Suraj Baksh Singh*, 3 Luck. 436=X U. D. (H. C.) 39=10 L. R. Rev. 23=110 I. O. 304=12 R. D. 58.

<sup>6</sup> *Ganesh Prasad v Bachu*, B. R. 7 of 1886.

<sup>7</sup> *Harbans Lal v Dhiroja Kuari*, 1936 A. I. R. Oudh 371=XVII U. D. (H. C.) 167.

<sup>8</sup> 1925 A. I. R. Oudh 683=VI U. D. (H. C.) 529=6 L. R. Rev. (O.) 98=2 O. W. N. 571=12 O. L. J. 635=89 I. C. 360=1925 R. C. 422.

<sup>9</sup> *Jhri Singh v. Tejbur*, 1929 A. L. J. 869=1929 A. I. R. All. 680=119 I. C. 93=13 R. D. 566.

<sup>10</sup> *isha v Abdul Ghani*, 5 L. R. Rev. 305=84 I. C. 916=VI U. D. (H. C.) 286=1924 R. C. 454=11 R. and Cr. L. J. 6=9 R. D. 337.

<sup>11</sup> *Jagan Nath v Unrai Singh*, 1927 A. I. R. Oudh 468=IX U. D. (H. C.) 81=9 L. R. Rev. 105=1926 R. C. 552=11 R. D. 451=106 I. C. 569=4 O. W. N. 933.

The talukdar of a talukdari mahal was the sadar lambardar for the talukdari mahal, which consisted of several chaks. The proprietor of one of the chaks was appointed its lambardar, in subordination to the talukdar the sadar lambardar, the revenue payable by him for the chak being paid to the talukdar who deposited it in the Government treasury. The talukdar may sue the chak proprietor for the revenue payable by him for deposit in the Treasury also for the lambardari dues as the revenue is payable through him.<sup>1</sup>

6. **Village expenses.**—Expenses on a scale agreed to and recorded in the *wajih-ul-arz* and disbursed by the lambardar in good faith may be allowed, although they appear to be excessive.<sup>2</sup> Such expenses are those of making collection etc., or of litigation for enhancement of rent of under-proprietor.<sup>3</sup> Necessary law expenses incurred in the course of management, *e g.*, in suing for rent or ejecting tenants will also come in under these words, if such expenses were unavoidable.<sup>4</sup> The expenses must be proved to have been incurred.<sup>5</sup>

7. **Other dues,** such as lambardari fees<sup>6</sup> although they have remained in abeyance for some time<sup>7</sup> If no revenue is payable on a patti or mahal, no lambardari dues are payable in this respect.<sup>8</sup> A lambardar may sue for such fees,<sup>9</sup> even though the defendant himself had paid revenue,<sup>10</sup> but cannot claim interest thereon,<sup>11</sup> or the lambardar is the assignee of the Government revenue.<sup>12</sup> These fees may be at a percentage not exceeding five, on the Government revenue, fixed by the Local Government.<sup>13</sup> In the absence of agreement that the lambardar should not get any lambardari dues, he is entitled to 5 p. c.<sup>14</sup> The lambardari dues of 5 per cent. are in addition to the

<sup>1</sup> *Ram Swarup v. Uma Nath Baksh Singh*, VII U. D. (H. C.) 117.

<sup>2</sup> *Farzand Ali v. Wazir Ali*, B. R. 5 of 1886; *Kurey Singh v. Mojiddunnissa*, XV U. D. 272=15 L. R. Rev. 462.

<sup>3</sup> *Subba Singh v. Bakhtawar Singh*, 5 O. C. 298.

<sup>4</sup> *Muh. Abdul Jalil Khan v. Muh. Abdussalam Khan*, 1932 A. L. J. 93=13 L. R. Rev. 29

<sup>5</sup> *Har Dei v. Ram Sarup*, XIX U. D. 86; *Korey v. Majid-un-nissa*, XV U. D. 272; *Ubaidulla v. Nazir Husain*, 1 O. L. J. 184.

<sup>6</sup> *Tulsi v. Bidhi Chand*, 8 L. R. Rev. 30=1926 R. C. 604.

<sup>7</sup> *Gondali v. Devi Das*, B. R. 23 of 1884

<sup>8</sup> *Mangali Prasad v. Beni Prasad*, II U. D. 116.

<sup>9</sup> *Bhojraj v. Srigopal*, 7 I. C. 647; *Govind Ram v. Jugal Kishore*, 1932 A. I. R. All. 1451=2 L. R. Rev. 128=XII U. D. (H. C.) 137.

<sup>10</sup> *Ib. Har Dei v. Ram Sarup*, XIX U. D. 86=1938 R. D. 127; *Ashraf v. Tara Singh*, 1938 A. L. J. (B. R.) 70; *Tara Singh v. Hardeo*, XIX U. D. 236=1938 R. D. 668.

<sup>11</sup> *Ib.*

<sup>12</sup> *Collector of Muttra v. Chandrabhan*, XIX U. D. 258=1938 R. D. 934.

<sup>13</sup> *Jaskaran Singh v. Maharaj Singh*, 1 Cr. and Rev. L. J. 70=4 O. C. 143.

<sup>14</sup> *Muh. Ali Husain Khan v. Rameshwar Prasad*, 10 L. R. Rev. 155=X U. D. (H. C.) 107=112 I. C. 746=13 R. D. 442

village expenses.<sup>1</sup> The mere fact that there is no entry about lambardari dues in the *wajib-ul-arz* does not override the provision of the Board's Circular requiring its payment.<sup>2</sup> A lambardar cannot recover his lambardari fee from his usufructuary mortgagee who has to collect and pay government revenue.<sup>3</sup> In a suit under section 230 against the lambardar and other co-sharers, the lambardar is entitled to his lambardari dues, even though the co-sharers have been making collections.<sup>4</sup>

The fact that no lambardari dues were payable at a previous settlement and a subsequent settlement does not repeat the entry, does not deprive the lambardar of his right to 5 p. c. according to the Circular of the Board.<sup>5</sup>

O 2, r. 2 of the Civil Procedure Code applies, so that omission of a portion of the claim due at the date of the suit should be avoided,<sup>6</sup> but this only when the portion alleged to have been omitted in a prior suit could have been claimed therein.<sup>7</sup>

A lambardar may charge interest on the revenue paid by him.<sup>8</sup>

**8 Accountability for receipt.**—It seems that if the defendant objects that the plaintiff has realised rents and profits which he ought to account for before being entitled to a decree, it is for the plaintiff to prove what he has collected and that he exercised due diligence in the collection of rent.<sup>9</sup> This ruling is not applicable where the suit relates to payment of revenue after a perfect partition between plaintiff and defendant.<sup>10</sup>

A lambardar who has collected more profits than the revenue which he had to pay cannot succeed in a suit under this section.<sup>11</sup>

This is not in accord with later rulings. A lambardar suing under this section has to prove that his realisations are not sufficient to pay the revenue.<sup>12</sup>

<sup>1</sup> *Pokhar Singh v. Gulab Kunwar*, 28 A. W. N. 2; *Ubadullah Khan v. Nazir Hussain Khan*, 24 I. C. 15=1 O. L. J. 184; *Khawaja Muh. Ishaq v. Jafari*, 1929 A. I. R. All. 155=10 L. R. Rev. 159=116 I. C. 742=IX U. D. (H. C.) 116=13 R. D. 293, *Sadiq Hussain Khan v. Hafizul Rahman*, 6 O. C. 89 (cost of collection).

<sup>2</sup> *Mangli Prasad v. Beni Prasad*, 11 U. D. 116.

<sup>3</sup> *Banwari Lal v. Reoti*, 11 U. D. 583=3 R. and Cr. L. J. 281.

<sup>4</sup> *Govind Ram v. Jugul Kishore*, 1932 A. I. R. All. 245=15 R. D. 333.

<sup>5</sup> *Sheo Charan v. Punna Lal*, 45 All. 84=20 A. L. J. 795=1923 A. I. R. All. 41=8 Rev. and Cr. L. J. 2=70 I. C. 917=1922 R. C. 370=V U. D. (H. C.) 98=3 L. R. Rev. 468=8 R. D. 548.

<sup>6</sup> *Sukh Lal v. Ganga Ram*, B. R. 20 of 1884.

<sup>7</sup> *Wazir Muhammad v. Amanat Khan*, 3 A. W. N. 172.

<sup>8</sup> *Arjun Singh v. Rudra Partap Singh*, 14 O. C. 164.

<sup>9</sup> *Dharampal v. Madan Mohan*, 12 A. W. N. 72.

<sup>10</sup> *Ishri Singh v. Tejhar*, 27 A. L. J. 869=1929 A. I. R. All. 689.

<sup>11</sup> *Chandra Mohan Lal v. Mathura*, 1935 A. I. R. All. 912=XVI U. D. 509=15 I. C. 474.

<sup>12</sup> *Babu Ram v. Chaturbhuj* XVIII, U. D. 344=1937 R. D. 562.

9. **Charge**—The section does not create a charge in favour of the lambardar. His right is a mere personal one against his co-sharer in default.<sup>1</sup>

10 **Suit**.—A suit under section 224 falls in Group A (No. 9) of the Fourth Schedule. The suit is cognizable by an Assistant Collector of the first class with a right of appeal, if any, to the Civil Court. The limitation is three years from the date when the arrears become due, and not when they are actually paid.<sup>2</sup>

It was held that a suit by a pattidar for arrears of revenue payable through him by the co-sharers whom he represented was governed by the three years' limitation of section 132 and not by the one year's limitation of section 129 of the Oudh Act,<sup>3</sup> and also that a claim for arrears of lambardari dues was governed by section 129.<sup>4</sup> The limitation in both cases will now be three years.

The court-fee is payable *ad valorem* on the amount claimed. The suit is within the exclusive cognizance of Revenue Courts.

One suit against a large number of co-sharers for different amounts due from them is not permissible.<sup>5</sup>

A suit by a lambardar against his co-sharers for revenue paid by him on their behalf is in order,<sup>6</sup> but, being in the nature of a suit for contribution, the decree ought to specify the liability of each co-sharer separately.<sup>7</sup>

A claim for haq lambardari and collection charges can be made by a lambardar for the first time in second appeal in a suit under section 230.<sup>8</sup>

A lambardar may join a claim for a share of profits as co-sharer with a claim for arrears of revenue.<sup>9</sup>

**225** A lambardar who has paid arrears of revenue or rent on account of a joint lambardar who defaults may sue such joint lambardar for the amount so paid.

Suit against a joint lambardar.

This is new so far as Agra is concerned, and gives effect *quod hoc* to *Rajendra Bahadur Singh v. Partab Bahadur Singh*.<sup>10</sup> The part of the

<sup>1</sup> *Brij Chandra Sharma v. Ram Narain*, 1937 All 746=1937 A. L. J. 707=1937 A. I. R. All. 618=1937 R. D. 385=XVIII U. D (H. C.) 143.

<sup>2</sup> *Chitarmal v. Kundan*, 2 A. W. N. 114

<sup>3</sup> *Nilkantha v. Suraj Prasad*, XII U. D (H. C.) 20=11 L. R. Rev. 397.

<sup>4</sup> *Ram Sarup v. Uma Nath Baksh Singh*, 1936 A. I. R. Oudh 263=XVII U. D. (H. C.) 117=1936 O. W. N. 452, R. D. 199=162 I. C. 319.

<sup>5</sup> *Tirbeni Prasad v. Narain Dass*, IV U. D. 142=1 L. R. Rev. 86=6 R. and Cr. L. J. 200=6 R. D. 248.

<sup>6</sup> *Munnu Lal v. Kifayat Ullah*, B. R. 10 of 1884.

<sup>7</sup> *Arjun Singh v. Rudra Partab Singh*, 14 O. C. 164

<sup>8</sup> *Yudhisthir Singh v. Angan Lal*, 1935 A. I. R. All. 976=1935 R. D. 326.

<sup>9</sup> *Ikeem Shankar Dat v. Kedar Nath*, 22 O. C. 183=53 I. C. 456

<sup>10</sup> 1938 A. I. R. Oudh 260=1938 R. D. 737=177 I. C. 191.

decision as to the period of limitation for such suit is not good law under the Act, under which the suit is in item 10, Group A, of the Fourth Schedule, with a period of limitation of three years from the date when the rent or revenue was paid.

A suit for compensation against a joint lambardar for revenue or rent paid on his account is also in Group A, No 10, and is cognisable as the suit mentioned in No 9. The limitation is three years from when the rent or revenue was paid. The court-fee is calculated according to the Court-Fees Act.

**226.** A co-sharer who has paid arrears of revenue or rent on account of a lambardar or another co-sharer who defaults may sue such lambardar or co-sharer for the amount so paid.

Suit for arrears of revenue by a co-sharer.

1. Reproduces section 222 of the Act of 1926, substituting *has paid* for *pays*, thus making it clear that it is the actual payment that brings a case under the section and adding "or rent" to make the section applicable to under-proprietors and corresponds to section 108(16) of the Oudh Act, by which a *puttadar* could sue for arrears of revenue or rent payable through him by the co-sharers whom he represented.

Section 222 of the Act of 1926 reproduced section 160 of the Act of 1901.

2. A co-sharer and lambardar cannot bring one suit under sections 224, 226.<sup>1</sup>

Where a person thinks that he is paying the revenue assessable on property of which he is not the owner he should apply under section 103 Land Revenue Act for the revenue to be determined on it, and then sue under section 224 or section 226.<sup>2</sup>

3. **Co-sharer** has the same meaning as in section 224. He need not be a recorded co-sharer. As a co-sharer includes his assigns, the amount can be recovered from the purchaser at auction of the share of the defaulting co-sharer.<sup>3</sup> An auction-purchaser's title is complete only on confirmation of the sale and the issue of the sale-certificate but relates back to the date of the sale. This renders obsolete the ruling noted below.<sup>4</sup>

The defaulting co-sharer must have been in possession at the date of default; if he was out of possession the arrears of revenue cannot be recovered from him.<sup>5</sup>

Where a mortgagor excepts from the mortgage by conditional sale certain lands, *e g.*, *sir*, grove and *muafi*, and nothing is said about the

<sup>1</sup> *Dwarka Prasad v. Gulzari Lal*, V U. D. (H. C.) 48=3 L. R. Rev. 190=8 R. and Cr. L. J. 172=1922 R. C. 87=7 R. D. 181.

<sup>2</sup> *Kunj Behari Singh v. Sheo Dan Singh*, XV U. D. 141=15 L. R. Rev. 432

<sup>3</sup> This will override *Ibdul Rahman v. Bhawan Din*, B. R. 7 of 1883, which cancelled *Mudan Mohan v. Dharam Lal*, 2 Leg. Rev. 63

<sup>4</sup> *Khem Karan v. Than Singh*, 8 A. W. N. 48.

<sup>5</sup> *Ballab Das v. Sita Ram*, 14 I. C. 578.

payment of rent of such lands, he continues to be the proprietor of such lands, in spite of foreclosure of the mortgage. He is therefore a co-sharer and not an under-proprietor, for the purposes of the section.<sup>1</sup>

If an owner on sale of his zamindari had reserved some *sir*-land to himself at a rental to be paid to the vendee and this had been acted upon for some years until the Settlement Officer formed the reserved land into a *sub-patti* bearing a certain sum as revenue, which sum was greater than the rent fixed by the sale-deed, the vendee cannot receive more than the rent mentioned in the sale-deed, as the Settlement Officer's action did not amount to a determination of rent but to a distribution of revenue, and could not affect the agreement made between the parties and acted upon.<sup>2</sup>

4. **Who has paid.**—A co-sharer can sue another only when he *has paid* something due from another co-sharer, whereas a *lambardar* may sue without having made such payment. Such payment should be out of the payor's own money and not out of collections in excess of his share.<sup>3</sup> Payment to a *lambardar*, who has misappropriated the money, will be no defence to a suit by a co-sharer who has paid to Government.<sup>4</sup> Where a co-sharer's interest has been sold by auction, the purchaser becomes a co-sharer. If revenue due from another co-sharer before his purchase is realised from him he can sue for reimbursement under sections 69, 70 Contract Act.<sup>5</sup>

Where after partition, revenue due from *A* after partition is realised from *B*, no longer a co-sharer, *B* may sue *A* in a Civil Court for refund.<sup>6</sup>

The fact that the plaintiff has collected profits does not deprive him of the statutory right given by this section to recover the amount he has paid for another co-sharer.<sup>7</sup>

But it has also been ruled that it cannot be laid down as a broad proposition that a plaintiff suing the defendant for the latter's share of revenue paid by the former should establish that he had paid it out of his own pocket.<sup>8</sup>

A suit lies only against a co-sharer who has defaulted. If by private arrangement each co-sharer has his own tenants from whom he collects

<sup>1</sup> *Kedar Nath v. Lachmin Koer*, 3 O. C. 310.

<sup>2</sup> *Kedar Nath v. Lachmin Kuar*, 2 O. C. 273.

<sup>3</sup> *Jugmohan Lal v. Ganga Prasad*, 1931 A. L. J. 60=XI U. D. (H. C.) 809=11 L. R. Rev. 267=14 R. D. 597.

<sup>4</sup> *Fazal Ali v. Jumna Das*, 1 Agra 229.

<sup>5</sup> *Ram Ratan Lal v. Gaura*, 1930 A. L. J. 1419=XI U. D. (H. C.) 152=L. R. Rev. 97=122 I. C. 765=14 R. D. 297.

<sup>6</sup> *Achal Singh v. Jageshwar*, II U. D. 688.

<sup>7</sup> *Moti Lal v. Isri Lal*, XV U. D. (H. C.) 25; *Contra, Durga Narain Singh v. Shankar Singh*, 1934 A. I. R. All. 813=XV U. D. 27=15 L. R. Rev. 209=18 R. D. 178.

<sup>8</sup> *Sri Ram v. Jai Kishan Lal*, 1938 All. 79=1937 A. L. J. 1237=1938 A. I. R. All. 37=1938 R. D. 66.

rents, and *B* realises from *A*'s tenants a sum in excess of the land revenue due from *A*, the latter cannot sue *B* under this section.<sup>1</sup>

5. An arrear of revenue, in section 132, Oudh Act, was held to mean an arrear not from the point of view of Government, but of the person who ought to have paid it, and that a suit under section 108 (16) by a pattidar for arrears of revenue payable through him by the co-sharers whom he represented was governed by section 132 and not section 129 of that Act.<sup>2</sup>

6. Suit.—The suit falls in Group A (No. 11) of the Fourth Schedule. The remarks made in respect of a suit in section 224 apply.

The suit is within the exclusive cognizance of Revenue Courts.<sup>3</sup>

Joint lessees, thekaders or farmers are not co-sharers, and hence one of them cannot sue the others in a Revenue Court.<sup>4</sup> One suit cannot be brought against several co-sharers.<sup>5</sup>

If money is paid by a co-sharer on account of the amount due from other co-sharers who have paid the amount to the lambardar and the latter has defaulted, a suit by the co-sharer against the lambardar would not fall under this section, because the claim is not for the recovery of arrears of revenue on account of the defendant's share, nor under section 224, because this amount was not payable by the co-sharer to the lambardar.<sup>6</sup>

A suit by a co-sharer for a declaration that another co-sharer is liable for the payment of arrears of revenue to the extent of his share does not lie in a Civil Court.<sup>7</sup>

The legal representative of a vendor who reserved a certain plot rent-free from a sale cannot sue in a Civil Court the vendee's legal representatives for a declaration that he is not liable to pay any revenue on the land reserved (a decree for arrears of revenue had been passed against him by the revenue court), and for damages for breach of contract to let the vendor hold rent-free.<sup>8</sup>

Suit for arrears of revenue by a muafidar or assignee. **227.** A muafidar or assignee of revenue may sue for arrears of revenue due to him as such.

1. This reproduces section 223 of the Act of 1926 and corresponds to section 108(18) of the Oudh Act.

<sup>1</sup> *Radha Gobind v. Kanhaya*, XVIII U. D. 56=1937 R. D. 67.

<sup>2</sup> *Nilkantha v. Suraj Prasad*, 1931 A. I. R. Oudh 32=XII U. D (H. C.) 20=11 L. R. Rev. 397=7 O. W. N. 1089.

<sup>3</sup> But see *Data Ram v. Sukh Ram*, 1 A. W. N. 59.

<sup>4</sup> *Mahipat v. Radhu*, 1 Leg. Rem. 2 (H. C.)

<sup>5</sup> *Tirbeni Prasad v. Narain Das*, 1 L. R. Rev. 86=IV U. D. 142.

<sup>6</sup> *Bharta v. Chet Ram*, 56 All. 821=1934 A. I. R. All. 427=1934 A. L. J. 286=18 R. D. 121=15 L. R. Rev. 305.

<sup>7</sup> *Bhan Partab v. Bisheshar Das*, 9 O. C. 232.

<sup>8</sup> *Sri Thakur Rangji Maharaj v. Ram Ratan*, 3 Rev. and Cr. L. J. 142.

Section 223 of the Act of 1926 reproduced section 161 of the Act of 1901, and corresponded to section 93 (i) of the Rent Acts, and clause of section 1 of Act XIV of 1863.

2. It has been held that the words of this section are wide enough to include a suit by a *muafidar* to recover from another *muafidar* who was appointed as a *lambardar* to collect the assigned revenue payable by the zamindars to the *muafidars* the plaintiff's share of such assigned revenue.<sup>1</sup> The Board had taken a different view<sup>2</sup> on the ground that section 93(i) referred to suits by *muafidars* against the persons who are liable to pay revenue to the assignee thereof, and did not cover a suit which really amounted to a claim for profits.

A and others were the zamindars entitled to remain in occupation and to collect the assets. By the terms of a Moghal grant, the zamindars were to pay the revenue not into the Government treasury but to B, to whom the revenue was assigned. The transaction was entered in the revenue papers as *muafi*. The last successor of B assigned the revenue to C, who sold his rights to D. C continued to receive the revenue. A suit by D against C is not under this section and within the cognizance of a Revenue Court, as the suit contemplated by the section is one against the zamindars who are primarily liable for the payment of revenue, which C admittedly was not.<sup>3</sup>

A suit for arrears of revenue by a person to whom a sanad of remission of land revenue has been granted lies under this section and not under section 224.<sup>4</sup>

The section applies also to assignees from the original assignee of Government revenue.<sup>5</sup>

Interest should not be allowed.<sup>6</sup>

In Ondh it has been held in that a suit by the assignee of land revenue against the *lambardar*, he may claim interest on the amount due to him and the court may award it to him.<sup>7</sup>

Where the revenue has been remitted by order of Government, a suit under this section will not lie for the portion that has been remitted.<sup>8</sup>

The decree does not create a charge.<sup>9</sup>

<sup>1</sup> *Sheodarsan v. Akhan Ali*, 26 All. 570—24 A. W. N. 129.

<sup>2</sup> *Abdul Karim v. Fuzil Azim*, B. R. 4 of 1893—13 A. W. N. 102.

<sup>3</sup> *Bhoopal Rai v. Sham Sundar Lal*, 1929 A. L. J. 243—1229 A. I. R. All. 781—XI U. D. (H. C.) 134—11 L. R. Rev. 65—142 I. C. 534—13 R. D. 542.

<sup>4</sup> *Chaman Singh v. Data Ram*, XIV U. D. 174—14 L. R. Rev. 411.

<sup>5</sup> *Kulsumun-nissa v. Noor Muhammad*, 1936 A. L. J. 1281—1936 A. I. R. All. 66—1936 R. D. 300.

<sup>6</sup> *Chandi Prasad v. Mohandial Singh*, 23 All. 5—20 A. W. N. 187; *Maharaj Singh v. Suryapal Singh*, 9 L. R. Rev. 306—IX U. D. (H. C.) 276—12 R. D. 678, *Contra*, *Ambika Dutt Ram v. Shams Ara*, 1939 A. I. R. Oudh 63—1939 O. W. N. 108.

<sup>7</sup> *Shams Ara v. Ambika Dutt Ram*, XV U. D. (H. C.) 150.

<sup>8</sup> *Beni Madho v. Bhagwan Prasad*, 8 A. L. J. 534.

<sup>9</sup> *Rithal Das v. Harnhul*, 6 All. 503—4 A. W. N. 176.



In a suit for arrears of revenue by an assignee thereof, the decree ought to be a joint one against all the co-sharers and the separate liability of the various defendants should not be apportioned.<sup>1</sup>

Where a claimant sued not as assignee but as *muafidar* and it was found that he was not a proprietor, the Civil Court was held to be the proper forum.<sup>2</sup>

An assignee of revenue is entitled to sue and to a joint-decree for arrears of revenue against all the co-sharers and not against the lambardar alone.<sup>3</sup>

In fact he must sue all the co-sharers in a body.<sup>4</sup>

But if through mistake the plaintiff considers the lambardar alone liable, and the latter does not object to the suit being decreed to the extent of his personal share, a decree may be passed against the lambardar only to such extent.<sup>5</sup>

Where at the previous settlement it was laid down that the *jama* for certain under-proprietary holding was included in the revenue payable by the superior proprietors, and this was repeated at the subsequent settlement, but the under-proprietary revenue was calculated and assessed, that it continued to be paid by the superior proprietor, the latter cannot sue the under-proprietor under this section but must seek his remedy under the Resumption Chapter.<sup>6</sup>

Where a co-sharer sued under section 230 pleads that he is a *malik farotar* and that the revenue is payable by the *malik mahal*, the court ought to enquire whether the parties occupy positions similar to those in the cases mentioned above.<sup>7</sup>

**3. Suit.**—The suit falls under Group A (No 12) of the Fourth Schedule. The remarks made in respect of suits under section 224 apply, with the exception that the limitation of three years runs from the time when the arrears of revenue become due.

Suit by a superior proprietor for arrears of revenue or rent due to him of revenue or rent. **228.** A superior proprietor may sue for arrears of revenue or rent due to him as such.

1. This reproduces in effect section 224 of the Act of 1926 dropping the opening words "*taluqadar* or other."

<sup>1</sup> *Mehrzia v. Gulzar Singh*, 1935 A. L. J. 517=1935 A. I. R. All. 553=XVI U. D. 318=1935 R. D. 236; *Imam Baksh v. Laiqunnissa*, XVII U. D. 27.

<sup>2</sup> *Beni Madho v. K. E.*, VII U. D. 38=7 L. R. Rev. 47=1926 R. C. 29=10 R. D. 128.

<sup>3</sup> *Naipal Singh v. James Skinner*, 1936 A. I. R. All. 127=1936 A. L. J. 436=1935 R. D. 701.

<sup>4</sup> *Imam Baksh v. Laiqunnissa*, XVII U. D. 27.

<sup>5</sup> *Bohrey Lekhraj v. Special Manager*, XVIII U. D. 348=1937 R. D. 563

<sup>6</sup> *Jugulkishore v. Sonpol*, XVIII U. D. 42=1937 R. D. 23, relying on *Pyare Lal v. Bibi Anna*, XVII U. D. 290=1936 R. D. 404.

<sup>7</sup> *Bhawani v. Reoti Ram*, XIX U. D. 72=1938 R. D. 17,

Section 224 of the Act of 1926 reproduced section 162 of the Act of 1901 and corresponded to section 93 (i) of the Rent Acts, and the 4th clause of section 1 of Act XIV of 1863.

2. A malikana allowance fixed by the Settlement Officer as payable by an inferior to his superior proprietor is rent and a civil suit does not lie for it<sup>1</sup> Rent payable by a sub-proprietor as defined in the Land Revenue Act is suable under this section but not under section 148.<sup>2</sup>

Under a compromise three villages were deemed to be the property of A, but B was to enjoy possession and to pay to A the yearly Government demands. A suit by A against B to recover these demands is not one by a superior proprietor against an inferior proprietor for arrears of revenue due to him.<sup>3</sup>

3. **Suit**—The suit falls in Group A (No. 13) of the Fourth Schedule. The remarks made in respect of suits under section 224 apply except that the limitation of three years runs from the date when the arrears of rent of revenue become due.

**229.** (1) In the absence of the determination of the date  
Profits when divisible by the settlement officer, or of an express  
agreement among the co-sharers, profits shall  
be divisible on such dates as the Provincial Government may, by  
rules made under this Act, prescribe.

(2) Revenue, rent or profits not paid on the day on which they fall due become on the following day arrears, and the lambar-dar, co-sharer, muafidar, assignee of revenue or superior proprietor, as the case may be, shall be entitled to claim interest on such arrears at the rate of one anna in the rupee per annum simple interest.

1. This reproduces in effect section 225 of the Act of 1926, substituting "the determination" for "any determination" and "at one anna per rupee per annum" for "one per cent. per mensem", adding "rent" between "revenue or profits", "simple" before "interest" and dropping "or talaqadar". Section 225 of the Act of 1926 reproduced section 163 of the Act of 1901.

2. The Local Government made the following rules for division of profits while the Act of 1926 was in force.

Rule 155, Revenue Court Manual.—The dates for division of profits are :—

(a) if the dates have been agreed upon by the persons concerned  
—the dates so agreed upon.

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<sup>1</sup> *Bhagwan Singh v. Imrat Singh*, 1938 All. 856=1938 A. L. J. 936=1935 A. I. R. All 615=1938 R. D. 790. *Contra*, *Manohar Lal v. Kashi Ram*, 1908 A. W. N. 209.

<sup>2</sup> *Gatsaran Narain v. Ram Singh*, XIX U. D. 186=1938 R. D. 565.

<sup>3</sup> *Sarabjit Pratab Bahadur Sahi v. Inderjit Pratab Bahadur Sahi*, 1933 A. I. R. All. 751=XIV U. D. (H. C.) 95=14 L. R. Rev. 413=17 R. D. 571.

- (b) if the dates have been determined and recorded by a Settlement Officer—the dates so determined and recorded ;
- (c) in other cases, profits are divided with the crops, the first of February and the first of August (the sugarcane *kist* where there is one being included with the *rabi*) ; where profits are divided annually, the first of August.

Dates mentioned in the *dasturdehi* of a village should be accepted under (b) above.<sup>1</sup> From the dates agreed or fixed as above, it is open to co-sharers to claim their shares of profits.<sup>2</sup>

Under the present Act Rule 15 of the Rules framed by the Provincial Government, known as the United Provinces Tenancy (Government) Rules 1940<sup>3</sup> gives effect to the provisions of this section and is as follows :—

### Rules to give effect to the provisions of section 229 of the Act.

15. In the absence of determination of the date by the settlement officer, or of an express agreement among the co-sharers, profits shall be divisible on the following dates :

- (a) Where profits are divided at each harvest,  
(the sugarcane instalment, where there is one, being included in the *rabi*) ... 1st February and 1st August.
- (b) Where profits are divided annually ... 1st August.

3. The section gives the starting points of limitation for suits under section 230 and section 231, and overrides rulings to the contrary.<sup>4</sup>

The part of the decision in *Nasir-ud-din v. Achchi*,<sup>5</sup> that the fact that collections were made subsequent to the dates mentioned in the section has been held to be bad law in *Sheo Ghulam v. Salik Ram*,<sup>6</sup> which decided that limitation runs from the date of distribution following the realisation. The Full Bench rule does not apply where the arrears of a previous year have not been realised in a subsequent year but only formed part of the demand for that year. Limitation in such a case runs from the first of August immediately following the year to which the arrears relate.<sup>7</sup> The profits accrue from day to day and vest in the co-sharers, although the time for distribution is postponed to the first of August.<sup>8</sup>

<sup>1</sup> *Ibrahim Khan v. Abdul Ahad Khan*, 1931 A. I. R. All 405=131 I. C. 137.

<sup>2</sup> *Pears Lal v. Jhabbar Lal*, 1929 A. L. J. 1098=XI U. D. (H. C.) 42=10 L. R. Rev. 361=13 R. D. 687

<sup>3</sup> See the U. P. Gazette dated 13th April, 1940.

<sup>4</sup> Such as *Nasir-ud-din v. Achai*, 20 A. L. J. 95=V U. D. (H. C.) 79 ; 16 All. 28 ; 16 All. 333.

<sup>5</sup> 20 A. L. J. 95.

<sup>6</sup> 46 All. 791 (F. B.)=22 A. L. J. 610=1924 A. I. R. All. 481=10 Rev. and Cr. L. J. 218=VI U. D. (H. C.) 201=5 L. R. Rev. 184=1924 R. C. 276=84 I. C. 158=9 R. D. 310.

<sup>7</sup> *Bali Kuar v. Khamani Ram*, 9 L. R. Rev. 288=IX U. D. (H. C.) 212=1928 A. I. R. All. 762=116 I. C. 746=12 R. D. 671.

<sup>8</sup> *Muh. Abdul Jalil Khan v. Muh. Abdul Salam Khan*, 1932 A. I. R. All. 178=1932 A. L. J. 93=13 L. R. Rev. 29=16 R. D. 110.

4. Interest at one anna in the rupee per annum on arrears is now made expressly payable.

In Oudh, it was held that interest on profits against the lambardar could not ordinarily be awarded, except in cases of breach of duty or negligence,<sup>1</sup> and much more so when profits were awarded on the basis of gross rental<sup>2</sup> and it was also held that the court could reduce the rate of interest to 6 per cent. if the plaintiff refused to receive even a short tender.<sup>3</sup> Now decisions of this type no longer express the law.

In a suit under section 231 against other co-sharers and the lambardar, interest is claimable on the excess collections prior to the institution of the suit; interest *pendente lite* is at the discretion of the court, under section 84, C. P. C.<sup>4</sup> In another case, a Bench, of which the learned judge who decided the last case was a member, held that the principle of section 229 (2) should ordinarily be applied in awarding interest after the institution of the suit so that the plaintiff should get interest at one per cent. right up to the date of realisation of his decree.<sup>5</sup>

Interest should be awarded on the amount found due,<sup>6</sup> and up to the date of realisation<sup>7</sup> and should always be awarded, unless the lambardar (in a suit under s. 230) shows special circumstances.<sup>8</sup>

**230. (1)** A co-sharer may sue the lambardar for settlement of accounts and for his share of the profits of a mahal or of any part thereof. against lambardar.

(2) In any such suit the court may award to the plaintiff a share not only of the amounts actually collected but also of such sums as have remained uncollected owing to the negligence or misconduct of the lambardar.

1. This reproduces section 226 of the Act of 1926, dropping subsection (3) and corresponds to section 108 (15) of the Oudh Act.

<sup>1</sup> *Kamta Singh v. Mata Baksh Singh*, 1922 A. I. R. Oudh 107=8 O. L. J. 630=65 I. C. 373=8 R. and Cr. R. L. J. 171; *Adya Prasad v. Chotey Lal*, 1924 A. I. R. Oudh 319=VI U. D. (H. C.) 169=5 L. R. Rev. (O) 99=1924 R. C. 7=11 O. L. J. 606=78 I. C. 85=8 R. D. 67; *Iqbal Narain v. Kailash Narain*, 1 Luck. 498=1927 A. I. R. Oudh 478=IX U. D. (H. C.) 86=9 L. R. Rev. 110=105 I. C. 565; *Shiva Dayal Singh v. Ram Narain*, IX U. D. (H. C.) 99=9 L. R. Rev. 92=1927 R. C. 537; *Sadiq Husain Khan v. Hafizul Rahman*, 6 O. C. 89.

<sup>2</sup> *Amina Bibi v. Unme Asia*, 1931 A. I. R. Oudh 318=XII U. D. (H. C.) 76.

<sup>3</sup> *Abdul Ghani v. Ali Begam*, 1930 A. I. R. Oudh 208=XI U. D. (H. C.) 197=7 O. W. N. 338.

<sup>4</sup> *Govind Ram v. Jugal Kishore*, 1932 A. I. R. All. 245; *Lallu Singh v. Chander Sen*, 1935 All. 557=XVI U. D. 326.

<sup>5</sup> *Muh. Abdul Jalil Khan v. Muh. Abdus Samad Khan*, 1932 A. L. J. 93=1932 A. I. R. All. 178=XIII U. D. (H. C.) 23=13 L. R. Rev. 29.

<sup>6</sup> *Tota Ram v. Sheo Singh*, 1 All. 261, from the time when the profits accrued to the date of suit, *Lallu Singh v. Chander Sen*, 1935 All. 557=XVI U. D. 326.

<sup>7</sup> *Sheo Sahar v. Ganga Sahai*, 1935 A. I. R. All. 469=XVI U. D. 208=1935 R. D. 181.

<sup>8</sup> *Abdul Ghani v. Abdul Majid*, 13 I. C. 116.

Section 226 of the Act of 1926 reproduced section 164 of Act II of 1901, and corresponded to section 93 (b) of the Rents Act and the 2nd clause of section 1 of Act XIV of 1863. Sub-section (2) corresponded to section 209 of the Rent Acts.

2. **Co-sharer** has the same meaning as in section 224.<sup>1</sup> A person who is merely in cultivatory occupation of some *khutkash* land in a *mahal*, is not a co-sharer entitled to sue for profits under this section.<sup>2</sup>

Pendency of partition proceedings is no bar to a suit for profits.<sup>3</sup>

Where a person under an instrument in the nature of a family settlement has the right to have and enjoy the profits of the property without having the right of possession, partition or transfer, which are the incidents of ownership, he is not a co-sharer within the meaning of the Act; he can therefore sue for the profits under the terms of the instrument in the civil court and have six years for limitation under Article 120, Limitation Act.<sup>4</sup>

Where there is a settlement providing for distribution of profits different from that to which co-sharers are entitled under the Tenancy Act, a suit for profits according to the agreement lies in a Civil Court.<sup>5</sup>

Co-sharer includes an assignee of a co-sharer's share of profits for a particular year,<sup>6</sup> and the transferee of a co-sharer's share.<sup>7</sup>

On transfer in a bhaya chara mahal of a part of the transferor's share in the shape of a specific area the transferee becomes a co-sharer.<sup>8</sup>

A member of a joint Hindu family, which owns a zamindari, though his name be recorded as owner of a specified share in that zamindari, cannot sue the collecting or other members for his share of the profits, because as a member of the joint family he in law has no definite share in it, and if he so sues it can be shown that he is a member of a joint family with the defendants.<sup>9</sup> Rulings under Act II of 1901 which turned upon section 201 (3) thereof are of no use now.

A person entitled to a share of the profits of a mahal is a co-sharer and includes a usufructuary mortgagee; and if there are two such mortgagees under a mortgage-deed one of them may sue the other for profits.<sup>10</sup>

<sup>1</sup> *Ahmad-ud-din v. Majlis Rai*, 5 All. 28=438; *Bhagwan Das v. Bhajju*, 14 A. W. N. 140; *Banke v. Umrao*, 8 O. C. 206; *Sheo Dayal v. Muthura Prasad*, Rent Act Ruling No. 87, are no longer good law.

<sup>2</sup> *Anardevi v. Munshi Ram*, 19 A. W. N. 62.

<sup>3</sup> *Muhammad Abdul Aziz v. Rafi-un-nissa*, 10 A. L. J. 469=17 I. C. 833.

<sup>4</sup> *Lakshmi Chand v. Anandi*, 1932 A. L. J. 197=1932 A. I. R. All. 272=135 I. C. 836=16 R. D. 190=13 L. R. Rev. 144=XIII U. D. (H. C.) 66.

<sup>5</sup> *Asharfi Kuer v. Ram Pearey*, 1939 All. 594=1939 A. L. J. 428=1939 R. D. 382.

<sup>6</sup> *Lallu Singh v. Chander Sen*, 56 All. 624=1934 A. L. J. 1=1934 A. I. R. All. 155=XV U. D. (H. C.) 156=15 L. R. Rev. 29=18 R. D. 32.

<sup>7</sup> *Turif v. Prahlad* XVI U. D. 313.

<sup>8</sup> *Harkesh v. Ghazi Ram*, 13 R. 2 of 1935=XVI U. D. 418.

<sup>9</sup> *Sri Ram Singh v. Suraj Pal Singh*, XVI U. D. 294, but see *Digambar Singh v. Barendra Nath*, 52 All. 436=1930 A. L. J. 286=14 R. D. 164.

<sup>10</sup> *Ganeshi Lal v. Bohre Shankar Lal*, 1935 A. L. J. 421=1935 A. I. R. All. 460=XVI U. D. 127.

In a case of several managers of a private trust, each manager is a co-sharer and may sue, if the trust instrument entitles him to do so, for the share of profits allotted to him.<sup>1</sup>

It is sufficient that the profits claimed are due to a co-sharer whether he is recorded or not.<sup>2</sup>

A mortgagee who has not obtained possession under his mortgage cannot recover profits from the mortgagor lambardar.<sup>3</sup>

A mortgagor who has deposited the right amount under section 84, T. P. A. to discharge a usufructuary mortgage is entitled to possession and profits from the date of the deposit, although a decree for redemption is passed later.<sup>4</sup>

When a co-sharer entitled to profits has become insolvent, his estate vests in the Receiver : he cannot assign the profits. Hence, an assignee cannot sue for profits.<sup>5</sup>

The vendee of a property which has been pre-empted away from him may sue for profits which have not been transferred by the pre-emption decree.<sup>6</sup>

No suit for profits against the lambardar lies at the instance of an owner who has been dispossessed by other people whose names are recorded in the revenue papers. He must first obtain possession by means of a Civil Court decree against the trespassers before he can maintain the suit and the lambardar is bound to pay him profits from the date when he obtains possession in execution of the Civil Court decree, as the lambardar's liability to pay profits is to the persons in possession whose names are recorded in the revenue-papers.<sup>7</sup>

**3. Adverse possession against co-sharer.**—A person ceases to be a co-sharer if he allows his proprietary right to become barred by

<sup>1</sup> *Manohar Suran v. Shambhu Nath*, 1933 A. I. R. All. 622=14 L. R. Rev. 261=XIV U. D. (H. C.) 42=17 R. D. 320 ; *Muh. Qamar Shah Khan v. Muh. Salam Ali Khan*, 55 All. 512=1933 A. L. J. 685=1933 A. I. R. All. 407=XIV U. D. (H. C.) 77=14 L. R. Rev. 450.

<sup>2</sup> Overriding *Ghisa v. Saadat Ali*, B. R. 5 of 1884 ; *Bhagwan Das v. Bhagwan Das*, B. R. 1 of 1892=10 A. W. N. 140 ; *Shib Singh v. Sita Ram*, 3 A. W. N. 3 ; *Shonkar Lal v. Banarsi Das*, 7 All. 891=5 A. W. N. 287 ; *Ajudhia Prasad v. Nand Kishore*, 16 A. W. N. 87.

<sup>3</sup> *Hanumandei v. Ram Bisul*, 14 I. C. 260.

<sup>4</sup> *Ram Bal Singh v. Ali Ahmad*, IX U. D. (H. C.) 15=9 L. R. Rev. 39=1927 R. C. 475=12 R. D. 179.

<sup>5</sup> *Govind Ram v. Kunj Behari Lal*, 46 All. 398=1924 A. I. R. All. 341=22 A. L. J. 217=5 L. R. Rev. 165=1923 R. C. 620=83 I. C. 403=VI U. D. (H. C.) 89=9 R. D. 348.

<sup>6</sup> *Abhai Nandan v. Bhagwan Datt*, 1925 A. I. R. All. 765=VI U. D. (H. C.) 533=1925 R. C. 334=6 L. R. Rev. 402=11 R. and Cr. L. J. 267=88 I. C. 298=9 R. D. 100.

<sup>7</sup> *Muhammad Abdul Jalil Khan v. Muhammad Ubaid Ullah Khan*, 1931 A. L. J. 1076=1932 A. I. R. All. 169=16 R. D. 26=XIII U. D. (H. C.) 23.

adverse possession or by limitation. This may happen in two ways, viz., by the lambardar or other co-sharers asserting an adverse title and maintaining the assertion for 12 years, or, by the co-sharer, while in possession, being dispossessed (by the lambardar or other co-sharers), or discontinuing his possession. In the first case Art. 144 of the Limitation Act applies, and the 12 years run from the date when the possession of the defendant becomes adverse to the plaintiff. In the second, Art. 142 of the same Act governs the case, and the period of 12 years runs from the date of the dispossession or discontinuance. One must bear in mind that this section deals with the case of undivided mahals in which the right of each co-sharer usually consists in getting his share of the profits. That is, the possession of a co-sharer consists in or is indicated by his share. He ceases to be in possession as soon as payment of his share of profits is stopped. Whether such stoppage of payment amounts to assertion of adverse possession or dispossession or discontinuance of possession depends on the circumstance of the case. It is not of itself equivalent to assertion of adverse possession.<sup>1</sup> It must be accompanied by some other circumstance, for it is quite conceivable that non-payment may be due to want of distributable funds. The stoppage must be accompanied with something which amounts to assertion of adverse right, *e. g.*, refusal to pay or denial of the co-sharer's right to receive payment.<sup>2</sup> Again non payment of profits is not dispossessing the co-sharer unless it is with that intention. Nor can non-receipt of profits be a necessary equivalent of discontinuance of possession by the persons entitled to receive them,<sup>3</sup> unless his title has been denied for more than 12 years.

So in an undivided mahal, receipt of the share of the rents and profits thereof is sufficient to preserve the title to the profits of the *sir*-land which has been in the possession of the defendants, co-sharers or lambardar, even though the profits of such *sir*-land have never been paid.<sup>4</sup>

<sup>1</sup> *Dindyal v. Basi*, 11 U. D. 689; *Sitla Baksh v. Umed*, 1 O. C. 143; *Mubinul-messa v. Ali Husain*, 1929 A. I. R. Oudh 402=6 O. W. N. 652=119 I. C. 866=13 R. D. 586; *Ganga Sahai v. Nihal Singh*, 1927 A. I. R. All. 846=8 L. R. Rev. 254=VIII U. D. 234=1927 R. C. 285=105 I. C. 628=11 R. D. 329. In this case A though entitled to a large share was in possession of only a small share, the difference being in possession of his co-sharer. The latter's possession over this was held not to be adverse to the other who had not realised anything from him for over 12 years.

<sup>2</sup> *Mehin Lal v. Badri Prasad*, 27 All. 436=25 A. W. N. 36=2 A. L. J. 170; *Lachman v. Tribeni*, 1924 A. I. R. All. 719=22 A. L. J. 518=VI U. D. (H. C.) 119=5 L. R. Rev. 174=1924 R. C. 210=79 I. C. 538=9 R. D. 399; *Ram Bali v. Paras Ram*, X U. D. (H. C.) 75=10 L. R. Rev. 95=110 I. C. 56=12 R. D. 171. The earlier ruling in *Muhammad v. Badri Prasad*, 17 All. 423=15 A. W. N. 88, was explained. See also *Mamraj v. Murki*, 9 L. R. Rev. 175=IX U. D. (H. C.) 177=114 I. C. 914=12 R. D. 961.

<sup>3</sup> *Mumraj v. Murki*, 9 L. R. Rev. 175=IX U. D. (H. C.) 177; *Sitla Baksh v. Umed*, 1 O. C. 143.

<sup>4</sup> *Raj Bahadur v. Bharat Singh*, 27 All. 348=25 A. W. N. 16.

4 Lambardar has the same meaning as in section 224. His heirs may now be sued for profits received by him.<sup>1</sup> The person who is sued for profits must be either the lambardar or his heir, etc.

A decree for profits passed against a Hindu widow as lambardar is not binding on the reversioners.<sup>2</sup>

A mere co-sharer cannot be sued under this section but he may be sued for settlement of accounts and for share of profits under section 231. In a suit against the lambardar under this section a decree cannot be passed against the collecting co-sharer unless the plaint is amended and the other co-sharers are impleaded.<sup>3</sup> A suit against the lambardar and an outsider who has actually collected the rents will not come under this section.<sup>4</sup> Where a mahal has two joint lambardars, both may be sued together, although they may have divided the mahal between them for purposes of collection.<sup>5</sup>

Section 230 or 231 does not apply to a suit against a person who is neither the lambardar nor a co-sharer.<sup>6</sup>

5. *Negligence or misconduct.*—Sub-section (2) enacts what had been the law before, viz., a lambardar is liable only to the extent of what he collects unless it was due to his neglect or misconduct that a portion remained uncollected.

A lambardar has the right to collect as lambardar the rents fallen due during his tenure of office, although he subsequently ceases to be so, and he holds the rents so realised to be distributed among the persons entitled in law to receive them.<sup>7</sup>

In Oudh, three judges held that if the lambardar is proved to have been negligent or to have misconducted himself, the court could decree to a co-sharer not only the share of the profits actually collected, but also the share of profits which has remained uncollected with interest thereon, and that he ought to keep accounts and that omission to keep proper accounts may amount to proof of such misconduct.<sup>8</sup>

<sup>1</sup> This overrides *Ahmad-ud-din v. Majlis Rai*, 5 All. 438—3 A. W. N. 69, and is in accordance with *Kifayat-ul-lah v. Ali Begam*, 13 A. W. N. 102—B. R. 5 of 1893.

<sup>2</sup> *Randhir Narain v. Jagan Nath*, 10 L. R. Rev. 96—X U. D. (H. C.) 77—112 I. C. 699—13 R. D. 461; *Dal Chand v. Ram Lal*, II U. D. 430.

<sup>3</sup> *Babu Ram v. Kundan Singh*, 1939 A. L. J. (B. R.) 63—XX U. D. 223—1939 R. D. 240.

<sup>4</sup> *Durgia v. Udai Ram*, 7 A. W. N. 297; *Sree Krishen v. Ishree*, 2 Agra 299; *Bhajjimal v. Bhagwan Das*, 15 A. W. N. 31.

<sup>5</sup> *Kamta Singh v. Mukta Prasad*, 29 All. 487.

<sup>6</sup> *Girwar Singh v. Ram Sarup*, 1935 A. L. J. 1117—XVI U. D. 507.

<sup>7</sup> *Pathraj Koer v. Jadu Nath Baksh Singh*, 1927 A. I. R. Oudh 517—IX U. D. (H. C.) 79—1927 R. C. 550—9 L. R. Rev. 103—105 I. C. 161—11 R. D. 652—4 O. W. N. 1012.

<sup>8</sup> *Chitarket Singh v. Kanhaya Baksh Singh*, IX U. D. (H. C.) 16—9 L. R. Rev. 100—1927 R. C. 541—4 O. W. N. 725—105 I. C. 285—11 R. D. 372.



The plaintiff must allege and prove the neglect or misconduct,<sup>1</sup> and what has remained uncollected on account thereof, and the court must record a finding to that effect<sup>2</sup> before it can act under this clause. It is a question of law what sort of evidence is admissible to prove negligence and what sort of evidence is admissible to disprove a presumption of negligence<sup>3</sup>

The rule is that unless the collections are so low that the court can draw an inference of negligence the decree should be on the basis of actual collections.<sup>4</sup>

A lambardar may be liable for his act of negligence but he cannot be made liable where the question of interpretation of a provision of law is involved, *e. g.*, he is not liable for not interpreting a provision as imposing a liability on the under-proprietors in respect of the rural police rate and not realising such rate from them.<sup>5</sup>

The negligence or misconduct must be that of the *lambardar*. Negligence or misconduct being established, the defendant is liable for what may be proved to have remained uncollected owing to such conduct and not for what might have been collected except for such negligence or misconduct.<sup>6</sup> More production of the rent roll will not justify a decree on the basis of the amount realisable as shown by it. It must be proved how much of it was not realised for want of due diligence. Where in a suit it is found that a portion of the rent has not been collected and such portion is excluded from the decree, a suit may be brought for it when collected.<sup>7</sup> When a mortgage in favour of the lambardar is redeemed profits due prior to the date of redemption, though collected afterwards, cannot be sued for.<sup>8</sup>

If the lambardar was the defendant and on his death his heirs are brought on the record as his legal representatives, they are liable for non-collections due to the negligence of the deceased.<sup>9</sup> This is opposed,

<sup>1</sup> *Muhammad Inayat Hussain v. Muhammad Karamat-ul-lah*, 12 All. 301=10 A. W. N. 131; *Dhanak v. Chain Sukh*, 8 All. 61=6 A. W. N. 1; *Bharat Singh v. Ganga*, 1928 A. I. R. All. 767=116 I. C. 744=IX U. D. (H. C.) 273=9 L. R. Rev. 303=12 R. D. 649; *Shuja Uddin Khan v. Mehdi Raza*, 1929 A. I. R. All. 873=118 I. C. 230.

<sup>2</sup> *Mungul Khan v. Mumtaz*, 2 All. 239; *Ganga Prasad v. Bachu Lal*, VI U. D. (H. C.) 138=5 L. R. Rev. (Oudh) 5.

<sup>3</sup> *Bhagwati Saran v. Deo Saran*, IX U. D. (H. C.) 9=9 L. R. Rev. 23=107 I. C. 702=1927 R. C. 458=12 R. D. 53.

<sup>4</sup> *Muh. Abdul Jalil Khan v. Muh. Abdus Salam Khan*, 1932 A. L. J. 93=XIII U. D. (H. C.) 23.

<sup>5</sup> *Nur Ahmad v. Muh. Abbas Khan*, 1930 A. I. R. Oudh 319=XI U. D. (H. C.) 182=11 L. R. Rev. 146=7 O. W. N. 338=122 I. C. 609=14 R. D. 173.

<sup>6</sup> See, however, *Gajadhar Singh v. Brahma Dat*, 1 Luck. 27=102 I. C. 268=1927 A. I. R. Oudh 533=11 R. D. 138.

<sup>7</sup> *Ramdial v. Janki*, II U. D. 690.

<sup>8</sup> *Gajadhar v. Har Prasad*, II U. D. 692; *Jugrani v. Iqbal Narain*, 1924 A. I. R. Oudh 347=5 L. R. Rev. (Oudh) 82=1923 R. C. 213=80 I. C. 441=8 R. D. 472.

<sup>9</sup> *Bharat Singh v. Tej Singh*, 40 A. 246=16 A. L. J. 193=4 Rev. and Cr. L. J. 42=43 I. C. 636.

to *Muradunissa v Ghulam Sajjad*,<sup>1</sup> a case under Act XII of 1881 section 209, which specially referred to the negligence of the "lambardar." Under the present section, 20 All. 73, is good law.<sup>2</sup> The decree will be against the estate of the deceased in the hands of the defendants and not personally against them.<sup>3</sup>

Since a co-sharer on transfer of his share becomes an exproprietary tenant of the whole proprietary body and not of the vendee alone the lambardar should collect rent from him, and his omission to do so is negligence.<sup>4</sup>

The duty to have rents fixed on such tenant is on all the co-sharers and not on the lambardar alone, and hence he cannot be charged with negligence if rent has not been fixed.<sup>5</sup>

Where a large percentage of rents remained uncollected and the tenants are solvent and the lambardar admitted that he had kept no accounts and had not entered collections in the patwari's papers, it was held that it was for him to explain why the collection was not made.<sup>6</sup>

Omission to produce account-books and to have rent realisations entered in the *siyza* and to sue or distrain for arrears, though tenants are solvent, is proof of gross negligence.<sup>7</sup>

The mere fact that a large sum remained uncollected does not prove negligence,<sup>8</sup> nor the fact that some of the decrees have not been realised.<sup>9</sup>

<sup>1</sup> 20 All. 73

<sup>2</sup> *Haidri Begam v. Thakur Lakshmi Narainji Maharaj*, 50 All. 101=25 A. L. J. 825=VIII U. D. (H. C.) 169=8 L. R. Rev. 172=103 I. C. 77=1927 R. C. 185; *Bhagwati Saran v. Deo Saran*, IX U. D. (H. C.) 9=5 L. R. Rev. 23=107 I. C. 702=1927 R. C. 458=12 R. D. 558.

<sup>3</sup> *Haidri Begam v. Thakur Lakshmi Narainji Maharaj*, 50 All. 101=25 A. L. J. 825=1927 A. I. R. All. 636=103 I. C. 77=1927 R. C. 185=VIII U. D. (H. C.) 169=9 L. R. Rev. 172=11 R. D. 273; *Suraj Prasad v. Debi Dayal*, 8 O. L. J. 485=65 I. C. 739.

<sup>4</sup> *Kishorilal v. Todar Singh*, 9 A. L. J. 244=13 I. C. 535, but see *Chhote Lal v. Ram Adhin*, 13 O. C. 70=5 I. C. 945.

<sup>5</sup> *Munir Ahmad v. Amina*, XIX U. D. (H. C.) 44; *Kunj Behari Lal v. Abdul Hadi*, V U. D. (H. C.) 62.

<sup>6</sup> *Mithanlal v. Mizajilal*, 10 A. L. J. 529=17 I. C. 914; *Shiva Chander Singh v. Ram Chunder Singh*, 37 All. 595=13 A. L. J. 851; *Chhammi Lal v. Sukhrani*, 1923 A. I. R. All. 537=VI U. D. (H. C.) 37=74 I. C. 19 (A)=1923 R. C. 501=6 L. R. Rev. 24=10 Rev. and Cr. L. J. 75=8 L. R. Rev. 358

<sup>7</sup> *Mithu Lal v. Chameli*, XV U. D. (H. C.) 139=15 L. R. Rev. 391.

<sup>8</sup> *Jodhi Ram v. Kaunsilla*, 1922 A. I. R. All. 41=20 A. L. J. 313=1922 R. C. 118=V U. D. (H. C.) 77=3 L. R. Rev. 205=67 I. C. 521=4 U. P. L. R. 160=7 R. D. 165; *Bhagwati Saran v. Deo Saran*, IX U. D. (H. C.) 9=1927 R. C. 458.

<sup>9</sup> *Ram Chandra Swarup v. Kripa Devi*, 1923 A. I. R. All. 216=VI U. D. (H. C.) 472, 224=8 Rev. and Cr. L. J. 174=65 I. C. 648=1923 R. C. 228=5 L. R. Rev. 218=10 Rev. and Cr. L. J. 269=86 I. C. 297=4 U. P. L. R. 33=8 R. D. 71.

6 **Practice** — In Oudh, the question has been debated as to the effect of non-production of account-books by a lambardar. In one case mere non-production of account-books was held not necessarily to render him liable on the basis of the gross demand,<sup>1</sup> but in another case he was held so liable.<sup>2</sup> The latter is now the correct law. (See section 232 *infra*.)

The accounts are or should be with the lambardar who is the accounting party. He should prove the accounts, and, when he does so, the plaintiff may show that there are uncollected items which would not have remained uncollected if the lambardar had been diligent.<sup>3</sup>

A decree against a deceased lambardar for assests collected or not collected through his negligence may be executed under section 53. Civil Procedure Code, against the family property in the hands of his son.<sup>4</sup>

The proper procedure is to ask the lambardar to file his accounts and books with a list of tenants showing the rent payable by each, and the amounts realised and left unrealised from each, with the reasons for not realising. The other party will then examine the accounts, etc., and show where the misconduct or negligence comes in.<sup>5</sup>

Since the duty of proving the extent of the collections lay or was cast on the lambardar, he had to prove it by sufficient and reliable evidence. The patwari's *siyaha*, which is generally dictated by the person collecting may or may not be such evidence according to circumstances. When the lambardar has filed his accounts and sworn them to be correct and full or the patwari has sworn to the accounts produced by him to be correct and full, the plaintiff must prove that more has been or would, but for the gross negligence or misconduct of the defendant, have been collected.<sup>6</sup> The percentage of the collections to the *nikasi* or rent roll and the evidence of the patwari, if belived may add to or detract from the evidentiary value of the *siyaha*. The book of counterpart of receipts is also helpful. The lambardar's account-book of collections is also good evidence. From these documents the extent of the receipts may be proved. If they show an unreasonably low percentage, negligence or misconduct may be inferred, unless the lambardar can convincingly explain the reason therefor, *e. g.*, poor production, stubbornness of tenants, political causes, futility of his efforts in realising through court, etc. etc. In inferring negligence

<sup>1</sup> *Fateh Narain Das v. Abdul Rahman*, 1926 A. I. R. Oudh 593=VIII U. D. (H. C.) 26=1927 R. C. 590=99 I. C. 217=3 O. W. N. 775=12 R. D. 473; *Kamyab Khan v. Saran*, 102 I. C. 478.

<sup>2</sup> *Jag Ram v. Iqbal Narain*, 1924 A. I. R. Oudh 347=5 L. R. Rev. (O) 82=1923 R. C. 213=80 I. C. 441=8 R. D. 472. See *Chitarket Singh v. Kanhaya Bakesh Singh*, IX U. D. (H. C.) 76.

<sup>3</sup> *Raghubar Charan v. Krishen Baldeo*, 26 I. C. 515 (A). See also *Ubaidulla Khan v. Nasir Husain*, 1 O. L. J. 184=24 I. C. 15.

<sup>4</sup> *Sri Kishan v. Jai Kishun Lal*, 12 L. R. Rev. 363=XIII U. D. (H. C.) 160.

<sup>5</sup> *Shiva Chander v. Ram Chunder Singh*, 37 All. 595.

<sup>6</sup> *Arjun Singh v. Ganga Bakesh*, 4 O. C. 1.

or otherwise from the state of collections, it must be borne in mind that cent. per cent. collection is a rarity and a margin must be allowed for that—the width thereof depending upon the past history of collections—and that it is not reasonable to expect that with the arrears of past years the realisations during a year would exceed the amount of the rent-roll minus the margin. Hence, no negligence should be inferred where 57 per cent. of the rent-roll for a particular year is collected, as also some of the arrears of past years, which brings up the total to 90 per cent. of the rent-roll.<sup>1</sup> Seventy-five per cent. of the rent-roll is proof of good and not negligent collection, but if less than that, negligence may be inferred.<sup>2</sup>

The fact that in a particular year the lambardar, according to his admission, collected a particular percentage, less than 100, is not any evidence that he collected or could have collected more than what he admits to have collected for another year.<sup>3</sup>

A lambardar who desires to get some allowance for shortage in collections should give some evidence showing that the collections were not up to the gross rental and what would be a fair percentage for the allowance. This he can do by producing his books showing truly the actual collections. If his books do not show this and are unreliable and misleading, percentage for short collections should not be allowed to him by mere guess work.<sup>4</sup>

The question of negligence or misconduct is a mixed question of law and fact, and the finding of the lower appellate court on such a question is not a finding of fact.<sup>5</sup>

**7. Accounting.**—The lambardar cannot claim a set-off for food and clothing supplied to the plaintiff<sup>6</sup> or on account of funeral expenses incurred for him.<sup>7</sup> Under the Act of 1926 according to the Second Schedule, list II item No. 10 no set-off was allowed except a sum due on an unsatisfied decree. That item has now been removed and a set-off can be claimed in view of O. VIII, R. 6 C. P. C. A lambardar cannot claim set-off for an amount paid on account of plaintiff's share of a civil court decree against the assets of the deceased son of the defendant and the husband of the

<sup>1</sup> *Shujauddin v. Mehdi Raza*, 118 I. C. 234.

<sup>2</sup> *Muh. Abdul Jalil Khan v. Muh. Abdus Salam Khan*, 1932 A. L. J. 93—1932 A. I. R. All. 178—13 L. R. Rev. 9—XIII U. D. (H. C.) 23.

<sup>3</sup> *Arjun Singh v. Ganga Baksh*, 4 O. C. 1.

<sup>4</sup> *Gunpatji v. Hanuman Singh*, 54 All. 125—1932 A. L. J. 1—13 L. R. Rev. 79—162—XIII U. D. (H. C.) 31, 69.

<sup>5</sup> *Chhabraji v. Ganga Singh*, 43 All. 29—18 A. L. J. 863—1921 A. I. R. All. 314—60 I. C. 643—2 U. P. L. R. 273—6 R. and Cr. L. J. 280—6 R. D. 377—IV U. D. 794 ; *Jodhi Ram v. Kaunsilla*, 20 A. L. J. 313—V U. D. (H. C.) 77 ; *Kunj Behari Lal v. Abdul Hadi*, 1924 A. I. R. All. 613—V U. D. (H. C.) 62—4 U. P. L. R. (A.) 200—76 I. C., 2—8 Rev. and Cr. L. J. 289—1922 R. C. 313—7 R. D. 167, *Asad Ali v. Faiyaz Ali*, 1922 R. C. 615—V U. D. (H. C.) 162—7 R. D. 210.

<sup>6</sup> *Tejani v. Jiva Singh*, B. R. 1 of 1887.

<sup>7</sup> *Mula v. Ulfat*, 6 A. W. N. 172.

plaintiff.<sup>1</sup> Where a suit is in respect of two or three years it should be treated as one for settlement of accounts, assets in one year being allowed to be set off against deficits in another, and a decree be given for the balance.<sup>2</sup> In a suit for settlement of accounts under this section if it appears that in one year the plaintiff has realised more than his share and in a subsequent year less than his share, the accounts of all the years in suit should be taken together.<sup>3</sup> Arrears of previous years realised during the years in suit should be included.<sup>4</sup>

In a suit for profits by co-sharers against the managing co-sharer the latter may state what he paid on behalf of the co-sharers and this is not a claim of set-off.<sup>5</sup>

The High Court has now definitely held that a suit for profits on the basis of gross rental may also include a claim for a share of the profits of years prior to those in suit which have been realised during the years in suit.<sup>6</sup> This overrules or renders obsolete the earlier rulings.<sup>7</sup> Sums collected for the years in suit in the succeeding years cannot be decreed.<sup>8</sup>

Where a lambardar is appointed after the rents of a particular period have fallen due, he is liable to account for whatever part of the arrears he realises after his appointment.<sup>9</sup> or if he merely recovers decrees for the same, for the amount realised under the decrees or for the ascertained value of the decrees.<sup>10</sup>

Weighment dues are part of the profits.<sup>11</sup> No deduction can be made because a relation of the lambardar has held some land at an inadequate rent from before the commencement of his office.<sup>12</sup>

<sup>1</sup> *Amma Bibi v. Umme Asia*, 1931 A. I. R. Oudh 318=XI U. D. (H. C.) 70=12 L. R. Rev. 156

<sup>2</sup> *Bahadur Singh v. Thakur Singh*, B. R. 5 of 1883.

<sup>3</sup> *Dhian Singh v. Uma Dutt* XV U. D. 276=15 L. R. Rev. 438

<sup>4</sup> *Nand Kishore v. Ram Ratan*, 7 A. W. N. 250; *Ram Dial v. Janki Prasad*, II U. D. 690; *Shambhu Ratan v. Badri Naram*, XIV U. D. (H. C.) 1=13 L. R. Rev. 392.

<sup>5</sup> *Muh. Muntaz Ali Khan v. Muh. Saadat Ali Khan*, 1930 A. I. R. Oudh 140=7 O. W. N. 147.

<sup>6</sup> *Sheo Ghulam v. Salik Ram*, 46 All. 791=22 A. L. J. 610=5 L. R. Rev. 189=10 Rev. and Cr. L. J. 218

<sup>7</sup> *Chhabraji v. Ganga Singh*, 43 All. 29; *Jodhi Ram v. Kaunsilla*, 20 A. L. J. 313; *Asad Ali v. Fayyaz Ali*, V U. D. (H. C.) 162=1932 R. C. 615; *Durga Prasad v. Ganga Saran*, 1922 A. I. R. All. 501=V U. D. (H. C.) 101=1922 R. C. 358=70 I. C. 763=3 L. R. Rev. 471=9 R. and Cr. L. J. 35=7 R. D. 1; *Chhammi Lal v. Sukhrani*, 74 I. C. 19=1923 R. C. 501.

<sup>8</sup> *Parbati Devi v. Banwari Lal*, 1934 A. I. R. All. 311=XV U. D. (H. C.) 7=15 L. R. Rev. 105=18 R. D. 91.

<sup>9</sup> *Mojiz Fatma v. Ali Akbar*, 18 A. L. J. 435.

<sup>10</sup> *Bharot Indu v. Muh. Mustafa Khan*, 41 All. 316=17 A. L. J. 167=52 I. C. 836.

<sup>11</sup> *Baldeo Singh v. Beni Singh*, 19 A. W. N. 75; but see *Kellu v. Choley*, B. R. 6 of 1887.

<sup>12</sup> *Beharilal v. Suraj*, II U. D. 693.

The word profits does not include the earning of a co-sharer, even of a lambardar, from investments made by him in a piece of land in the village, subject to the payment of rent therefor. Such an investment is not presumed to be for the benefit of all the co-sharers, *e. g.*, if a co-sharer or lambardar starts a cattle market in the common land and derives profits, he is not compellable to share those profits with his co-sharers.<sup>1</sup>

A lambardar cannot charge the whole revenue paid by him to the share of any particular co-sharer.<sup>2</sup>

A lambardar cannot claim that a deficit in one year may be deducted from the profits of the succeeding year.<sup>3</sup> This was so decided because the learned Judge was of opinion that making the deduction would amount to allowing a set-off which was opposed to List II of the 2nd Schedule (item No. 10). The reasoning is hardly sound.

Village expenses at 10 per cent. on gross rent are allowable,<sup>4</sup> and have to be proved.<sup>5</sup>

Where lambardar gives no evidence of the amount of actual expenses of collection, the rate of 5 per cent. on the total amount of the collections made by the lambardar (and not on the amount of the net profits) was considered reasonable in Oudh.<sup>6</sup>

Payments forming no part of the expenses of collection cannot be allowed as a set-off in a revenue suit for profits.<sup>7</sup>

A co-sharer suing under the section cannot claim to recover share of the profits of land held by other co-sharers in excess of their proper shares,<sup>8</sup> for he is not entitled as such to sue a co-sharer for the share of the profits of a part of an estate due to himself and other co-sharers in the estate.<sup>9</sup>

The lambardar was the mortgagee of a co-sharer, who obtained a preliminary decree for redemption in March, 1911, and deposited the redemption money in court in August, 1911. Proceedings for a final decree for redemption were taken later and the co-sharer obtained possession in

<sup>1</sup> *Chattar Singh v. Ajulhia Prasad*, 57 All 707=1936 A I R. All 324.

<sup>2</sup> *Ramsarup v. Wajahuddin*, 58 I C. 546.

<sup>3</sup> *Muridhar v. Sita Ram*, 14 I C. 121.

<sup>4</sup> *Mithu Lal v. Chameli*, 1935 A. I R All 777=XV U D. (H. C.) 139=15 L R Rev. 331=155 I. C. 800 ; *Amina Bibi v. Unme Asia*, XII U. D (H C.) 70, but see *Ghani Ahmad v. Aziz Begam*, VI U. D (H. C.) 521=6 L R. Rev. (Oudh) 93

<sup>5</sup> *Ubaidullah Khan v. Nazir Husain*, 1 O. L J. 184 ; *Hardei v. Ram Surup*, XIX U. D. 86 ; *Kurey v. Majid-unnessa*, XV U. D 272=18 R. D. 341.

<sup>6</sup> *Abdul Ghani v. Ali Begam*, 1930 A. I R. Oudh 208=XI U. D. (H. C.) 197=7 O. W. N. 338 ; *Ghani Ahmad v. Aziz Begam*, VI U. D. (H. C.) 521=6 L. R Rev (O.) 93.

<sup>7</sup> *Muhammad Abdul Jalil Khan v. Ubaidullah Khan*, 1931 A. L. J. 1076=1932 A. I. R. All. 169=16 R. D 26.

<sup>8</sup> *Khurshed Ali v. Nawab Ali*, 1 O. C 152, following Rent Act Ruling, No. 67 ; *Munir Ahmad v. Amina*, XIX U. D. (H C.) 44=1938 R. D 263.

<sup>9</sup> See *Bishambhar Nath v. Bhola*, 34 All. 98 cited in note 2 to next section on page 702 *infra*.

November, *i. e.*, after the date when, according to the rules of the Board for distribution of profits, the profits for the *khariif* of that year became due to co-sharers from the lambardar. The preliminary decree for redemption did not provide for the accounting of this *kist*. It was held that the co-sharer was entitled to profits of that *kist*.<sup>1</sup> This, it is submitted, is bad law, as all accounts up to the date of final redemption must be adjusted before the final decree is drawn up, and any account unsettled cannot be the subject of a separate suit.<sup>2</sup>

The plaintiff can insist that the profits of *sir* and *khudkasht* lands in the possession of other co-sharers should be taken into account,<sup>3</sup> specially when the extent of such land is in excess of the share of the occupying co-sharer.<sup>4</sup> If the lambardar makes a usufructuary mortgage of his *sir* and *khudkasht* and becomes the exproprietary tenant thereof, he must account for 75 (now 87½) per cent. of the normal rent to the other co-sharers, in spite of the fixation of a lower rent in a proceeding between him and the mortgagee.<sup>5</sup> Where *sir* and *khudkasht* has become the subject of exproprietary tenure on a purchase by the plaintiffs and defendants, the rents cannot be taken into account until they have been assessed.<sup>6</sup>

The purchaser of an undivided share is entitled to claim profits in respect of the *sir* and *khudkasht* lauds bought by him from the whole estate, although he did not have exproprietary rent fixed on such lands.<sup>7</sup>

Necessarily, an estimate of sayar income, such as *chari*, is somewhat vague. A settlement officer's report as to the estimate is admissible in evidence under section 35, Evidence Act, and the report of a commissioner appointed by the Court for the purpose, though somewhat vague, as it must be, affords a workable estimate.<sup>8</sup>

The profits of *usar* land brought into cultivation by a lambardar should be divided in the absence of evidence to the contrary.<sup>9</sup>

<sup>1</sup> *Ram Karan v. Achul Singh*, 3 O. L. J. 271=35 I. C. 799.

<sup>2</sup> *Kashi Prasad v. Bajrang*, 30 All. 36; *Ram Din v. Bhup Singh*, 30 All. 225, *Umrai v. Gulzari Lal*, 12 O. C. 152=2 I. C. 834; *Sheo Nath v. Gaya Prasad*, 8 O. C. 302; *Satyabadi v. Hakbai*, 34 Cal. 223; *Rukmin Bai v. Vankata*, 31 Bom. 527.

<sup>3</sup> *Ganga Singh v. Ram Sarup*, 38 All. 223=14 A. L. J. 252=2 R. and Cr. L. J. 73=33 I. C. 119.

<sup>4</sup> *Sohan Pal Singh v. Special Manager*, 1936 A. L. J. 1318=1937 A. I. R. All. 113=1936 R. D. 578

<sup>5</sup> *Baldeo Singh v. Chail Behari*, 18 A. L. J. 944=IV U. D. 809=59 I. C. 688=6 R. D. 391

<sup>6</sup> *Kunj Behari Lal v. Abdul Hadi*, 1924 A. I. R. All. 613=V U. D. (H. C.) 62=1922 R. C. 313=3 L. R. Rev. 260=8 R. and Cr. L. J. 289=77 I. C. 1032=4 U. P. L. R. 200=7 R. D. 167; *Munir Ahmed v. Amina*, XIX U. D. (H. C.) 44=1938 R. D. 263. *Contra*, *Collector v. Ram Kirat Rai*, 14 L. R. Rev. 30=XIV U. D. 16.

<sup>7</sup> *Collector v. Ram Kirat Rai*, XIV U. D. 16=14 L. R. Rev. 30.

<sup>8</sup> *Ganpatji v. Hanuman Singh*, 54 All. 125=1932 A. L. J. 1=13 L. R. Rev. 7, 162=XIII U. D. (H. C.) 13, 69.

<sup>9</sup> *Ghani Ahmad v. Asiz Begam*, VI U. D. (H. C.) 521=6 L. R. Rev. (O.) 93.

Profits mean the balance of gross receipts after payment of Government revenue, cesses and expenses. The expenses are in addition to the lambardari dues.<sup>1</sup> Expenses of cultivating *sir* held jointly with plaintiff cannot be deducted.<sup>2</sup>

8. **Suit.**—A suit under section 230 falls in Group A (No. 14) of the Fourth Schedule, and was provided for by section 108 (15) Oudh Rent Act. It is cognizable by an Assistant Collector of the first class. The limitation is three years from the date when the share of profits becomes payable (see section 229). The court-fee is leviable on the amount claimed. The suit is within the exclusive cognizance of Revenue Courts.

A suit for a declaration that the plaintiff is entitled to a share in a sum in deposit in court to the credit of the defendants as the plaintiff's share of the profits recoverable from the defendants who are the heirs of the deceased lambardar is one for profits and does not lie in a civil court.<sup>3</sup> A suit for a share of the income of land occupied by houses or their appurtenances is cognizable by a Civil Court.<sup>4</sup>

Where co-sharers, being members of a family, agree among themselves that the entire income of the joint property should in the first instance, go to one of them, whether or not a lambardar, who should distribute it among them in certain proportions, the agreement is binding on their heirs so long as it is not terminated, and a suit under sections 230 or 231 can not be brought.<sup>5</sup>

When *A* and *B* are said to have obtained joint possession of zamindari, *A*'s suit against *B* for possession and mesne profits is not maintainable in a Civil Court, for without alleging dispossession he has no cause of action for a suit for possession, and the relief for mesne-profits can be claimed as profits under section 230 or section 231.<sup>6</sup>

*A* mortgaged his share to *B* with possession, and remained in cultivatory possession of certain portions of the mortgaged land as tenant. Then he sold his share, and left a portion of the consideration with the vendee to pay the arrears of rent due by *A* to the mortgagee in respect of such land and to the lambardar in respect of some other land. The vendee paid this money to the lambardar. A suit by *B* to recover his share of the money lies against the lambardar alone in a rent court.<sup>7</sup>

<sup>1</sup> *Ubaid ullah v. Nazir Husain*, 1 O. L. J. 184=21 I. C. 15.

<sup>2</sup> *Mulchand v. Bhikari*, 5 A. W. N. 129.

<sup>3</sup> *Mubarak Bano v. Ali Raza*, 1928 A. I. R. All. 556=IX U. D. (H. C.) 132=15 I. C. 769=9 L. R. Rev. 192=12 R. D. 430.

<sup>4</sup> *Drighbijai Singh v. Hira Devi*, 38 All. 322=14 A. L. J. 419=2 R. and Cr. L. J. 169=34 I. C. 276.

<sup>5</sup> *Hasina Begam v. Abdul Hafiz*, 1934 A. I. R. All. 139=14 L. R. Rev. 717=XIV U. D. (H. C.) 109=17 R. D. 901=146 I. C. 554.

<sup>6</sup> *Bageshar v. Mahabir*, 1935 A. L. J. 546=1935 A. I. R. Ali. 526=XVI U. D. 279=1935 R. D. 251.

<sup>7</sup> *Beni Madho v. Asghar Hasain*, 3 O. L. J. 515=37 I. C. 65.



Where a share in a village together with profits due to date was sold, the purchaser was not held entitled to sue in a revenue court for such profits, as he was not a co-sharer during the period.<sup>1</sup>

The basis of a suit for mesne profit against certain persons, one of whom is the lambardar, who have wrongfully kept the plaintiff out of possession, is different from that of a suit for profits against the lambardar, because in the latter case he is authorised to collect rents on behalf of the plaintiff whereas in the former case he is not.<sup>2</sup> A lambardar mortgaged his share usufructually and then took a lease of the share from the mortgagee. After the expiration of the lease he continued to make collections. Held that the mortgagee's remedy was one for possession and mesne profits.<sup>3</sup>

A lambardar cannot sue on behalf of the co-sharers for profits.<sup>4</sup> O. 2, r. 2, C. P. C. applies.<sup>5</sup> Where two suits under the section are brought by a co-sharer in one of which the plaintiff sues for profits from the weighment dues in a bazaar in one *patti* and in the other he sues for other such dues and *sir* plots in three *pattis* of the same *mahal*, one *patti* being the same in both suits, the second suit was held to be barred.<sup>6</sup>

Where a plaintiff omitted to include the profits of *kharif* under the mistaken belief that they were not payable until the following August O. 2, r. 2, C. P. C. was held not to bar his claim for it in a subsequent suit.<sup>7</sup>

9. The claim against a lambardar is personal. Hence a decree passed against a widow lambardar cannot be executed against her husband's property in the hands of reversioners.<sup>8</sup>

Suit for settlement of accounts and profits against a co sharer.

**231. (1)** A co-sharer may sue another co-sharer for a settlement of accounts and for his share of the profits of a *mahal* or of any part thereof.

**(2)** In a suit under this section, the plaintiff shall make the lambardar and all co-sharers interested in the division of profits parties to the suit.

<sup>1</sup> *Nawab Ali Khan v. Suraj Bal*, 4 Luck. 535=1930 A. I. R. Oudh 193=7 O. W. N. 202=XI U. D. (H. C.) 92=121 I. C. 896=14 R. D. 69.

<sup>2</sup> *Sheobaran Singh v. Bhagwan Sahay*, 41 All. 286=17 A. L. J. 313=5 R. and Cr. L. J. 157=50 I. C. 973.

<sup>3</sup> *Tirbeni Sakai v. Lachmi*, 1923 A. I. R. All. 346=VI U. D. (H. C.) 190=1923 R. C. 391.

<sup>4</sup> *Udai Ram v. Ghulam Husain*, 3 Leg. Rem. 10 (H. C.).

<sup>5</sup> *Girdhari Lal v. Khare Prasad*, 1925 A. I. R. All 795=VII U. D. (H. C.) 28=11 Rev. and Cr. L. J. 193=7 L. R. Rev. 22=88 I. C. 530=1925 R. C. 566=10 R. D. 87.

<sup>6</sup> *Ram Charan Rawat v. Ahmad Ali*, XVIII U. D. 77=1937 R. D. 86.

<sup>7</sup> *Nihal Singh v. Najuban*, VI U. D. (H. C.) 171=1923 R. C. 227=8 R. D. 70.

<sup>8</sup> *Dal Chand v. Ram Lal*, II U. D. 430 ; *Randhir Narain v. Jagan Nath*, X U. D. (H. C.) 77.

1. Sub-section (1) reproduces sub-section (1) of section 227 of the Act of 1926.

Sub-section (1) of section 227 of the Act of 1926 reproduced sub-section (1) of section 165 of Act II of 1901, and corresponded to section 93 (2) of the Rent Acts, of 1882 and 1873 and clause (2) of section 1 of Act XIV of 1863.

It corresponds to section 108(15) of the Oudh Act.

Sub-section (2) is new.

Sub-section (2) makes it imperative to implead the lambardar and all co-sharers interested in the division of profits. A suit will not be dismissed for absence of all interested parties. They may be impleaded under Order 1, rule 10 of the Civil Procedure Code.<sup>1</sup>

2. A suit wrongly described as one under section 230 may be amended into one under this section.<sup>2</sup>

In Oudh, it was held that the plaintiff need not have been a recorded co-sharer during the whole of the period to which the suit related and that it was sufficient if his name was recorded at the time of the institution of the suit.<sup>3</sup>

A co-sharer included an under-proprietor so that a suit for profits between under-proprietors fell under this section.<sup>4</sup>

In Oudh it was held that in spite of giving a theka of his share, a co-sharer could sue for his share of profits, as a thekadar was a tenant and not a co-sharer or the representative or assignee of the co-sharer.<sup>5</sup> Now this is bad law in view of section 223.

A Ganwadhdar (in the Ballia District), although he may be a sub-proprietor under the definition of that word in the Land Revenue Act pays rent to his superior proprietor and has nothing to do with the payment of revenue, and is therefore not a co-sharer in the mahal which means a local area held under a separate engagement for the payment of land revenue. He cannot therefore sue under this section.<sup>6</sup>

An auction purchaser of a share in a village was held entitled to claim profits from the date of the sale (*vide* section 65, Code of Civil

<sup>1</sup> *Ram Bharose v. Sunder Lal*, XX U. D. 104=1938 R. D. 826.

<sup>2</sup> *Chander Sen v. Mohan Singh*, 11 Rev. and Cr. L. J. 20=VI U. D. (H. C.) 507=5 L. R. Rev. 335=1924 R. C. 482.

<sup>3</sup> *Balgovind v. Gajadhar*, 12 O. C. 13.

<sup>4</sup> *Maharaja v. Daryai*, 13 O. C. 251

<sup>5</sup> *Rameshar v. Achhaibar Singh*, XII U. D. (H. C.) 166=12 L. R. Rev. 373.

<sup>6</sup> *Ram Lakhan Singh v. Ram Narash Singh*, XVIII U. D. 238=1937 R. D. 337.

Procedure) and not from the date when after the confirmation of the sale he obtained mutation of names in his favour.<sup>1</sup>

Shares of profits of a bazar for the sale of cattle held on the land of the mahal may be included,<sup>2</sup> and so the share of the amount decreed for rent, in favour of a co-sharer defendant.<sup>3</sup>

A lambardar may as a co-sharer sue other co-sharers for his share of the profits,<sup>4</sup> and if he is the only person to whom the excess in the hands of the or a defendant should go, he should get a decree, the court adding any necessary parties under Order 1, rule 10, (Civil Procedure Code)<sup>5</sup> He can sue only for himself and not also on behalf of other co-sharers as well,<sup>6</sup> although he has paid such others their shares of the profit.<sup>7</sup> A lambardar cannot as lambardar sue his co-sharers for any sum due from them by reason of their holding *sir* or *khudkasht* land in excess of their shares.<sup>8</sup>

Where a co-sharer cultivates more *khudkasht* land than his share entitles him to cultivate, he is liable for the amount of excess cultivation at a fair rate of rent, which is usually non-occupancy rate of rent of similar land, unless there is no difficulty in ascertaining the fair rate of rent.<sup>9</sup>

Where the defendant having failed to file accounts the plaintiff obtained an order for the appointment of a commissioner to examine the patwari's *siahas* and to prepare an account, and the court subsequently dismissed the suit as the plaintiff did not file copies of the *siahas* as they could not be easily obtained, the case was remanded for trial.<sup>10</sup>

3. Interest may be allowed on profits decreed to a lambardar against another co-sharer who has made collection in defiance of the lambardar.<sup>11</sup>

<sup>1</sup> *Hashmit Ali v. Court of Wards*, 5 O. L. J. 31—15 I. C. 248—4 Rev. and Cr. L. J. 160

<sup>2</sup> *Ahmad Husain v. Rahmatullah*, 3 Rev. and Cr. L. J. 23—II U. D. 205.

<sup>3</sup> *Bhagirathi v. Khet Pal*, VIII U. D. (H. C.) 174.

<sup>4</sup> *Banke Behari v. Charni*, 29 I. C. 473, (A); *Gangra Singh v. Ram Sarup*, 38 All. 223; *Bansidhar v. Mata Din*, 4 O. W. N. 205—101 I. C. 196—IX U. D. (H. C.) 52—9 L. R. Rev. 73—1927 R. C. 492

<sup>5</sup> *Gajraj Singh v. Tej Singh*, 1938 All. 143—1937 A. L. J. 1277—1938 A. L. R. All. 55—1938 R. D. 10.

<sup>6</sup> *Bishambhar Nath v. Bhola*, 34 All. 98—8 A. L. J. 1245—12 I. C. 920.

<sup>7</sup> *Koka v. Chunni*, 50 All. 342—25 A. L. J. 1057—1927 A. L. R. All. 623—VIII U. D. (H. C.) 276—8 L. R. Rev. 333—1927 R. C. 357—105 I. C. 745—11 R. D. 284.

<sup>8</sup> *Koka v. Chunni*, 50 All. 342—25 A. L. J. 1057—VII U. D. (H. C.) 276—8 L. R. Rev. 333—1927 R. C. 357.

<sup>9</sup> *Din Dayal v. Tarak Nath*, 1932 A. I. R. All. 241—16 R. D. 369.

<sup>10</sup> *Muhammad Abdul Aziz v. Muhammad Abdul Jalil*, 4 Rev. and Cr. L. J. 34—5 I. C. 371.

<sup>11</sup> *Bansidhar v. Mata Din*, 4 O. W. N. 205—101 I. C. 196—IX U. D. (H. C.) 52.

4. *Res judicata*.—As profits against co-sharers are calculated on the actual figures of each year, there can be no *res judicata* as to the rents for *sir* and *khudkash*, because in a previous suit for other years, they were fixed at a certain figure.<sup>1</sup>

5. *Suit*.—The suit falls in Group A, No. 15, of the Fourth Schedule, and was in section 108(15) Oudh Rent Act. The remarks made in respect of suits under section 230 apply.

Where *sir* is recorded as *sir* of a co-sharer and he claims to be an exproprietary tenant liable for rent and not for profits, he should get the rent determined in a proper proceeding but cannot resist the profits suit on that account.<sup>2</sup>

Exproprietary rights arise in the grove-land, but not in the grove itself, which passes to the transferee of the proprietary rights. A suit by the transferee of a share in the patti in which the grove-land is situate against another co-sharer of that patti for a share in the sale-price of the fruits of the grove is cognisable by a Civil Court.<sup>3</sup>

Where a co-sharer holds lands of which he is the exproprietary tenant he is liable to account for the rent of the same only at the rate fixed by law, and not at the reduced rate fixed by section 26.<sup>4</sup>

In a suit for rendition of accounts the court of first instance decreed the claim for one year only. The appellate court reduced the amount due for one year, but ordered that profits for three years should be taken into consideration, although the plaintiff had not appealed about the disallowance of his claim for two years. The Board ruled that the appellate court could support the decree on grounds not taken before it and that the order was a proper one if the profits due for the other two years did not exceed the deductions made by it.<sup>5</sup>

On the partition of a joint Hindu family a village was allotted to A, B and C, half to A and half to B and C. The agreement at the time of partition was that the member or members to whom a village should be assigned would be entitled to the arrears of rent due on the date of partition. A became lambardar of the village and in that capacity took bonds from the tenants for those arrears. The village was then perfectly partitioned between A, B and the son of C, who had died by then. Thereafter B and C's son sued A for a half share of the money which A had realised in respect of the bonds and for a declaration that they were entitled to a half share of the money remaining due thereunder. The suit was held not to fall under this enactment as the arrears for which the

<sup>1</sup> *Baldeo Baksh v. Pahlad Singh*, 5 O. L. J. 67=45 I. C. 218.

<sup>2</sup> *Batan Lal v. Bala Prasad*, XVII U. D. 376=1936 R. D. 530.

<sup>3</sup> *Yakub Ali v. Tajammul Husain Khan*, 1932 A. I. R. All. 653=13 L. R. Rev. 383=XIII U. D. (H. C.) 180.

<sup>4</sup> *Chandrika Singh v. Inder Kuar*, X U. D. (H. C.) 161=117 I. C. 449=13 R. D. 13, 68=10 L. R. Rev. 194.

<sup>5</sup> *Ram Prasad Dass v. Sita Ram*, II U. D. 575.

bonds taken were not the profits of the estate of *A*, *B* and *C*, but were moneys to which they were entitled under a partition.<sup>1</sup>

The uniform period of limitation prescribed for suits under both sections 230 and 231 does away with the force of the rulings noted in the footnote.<sup>2</sup> As joint lessees are not co-sharers, one of them cannot sue the others in a Revenue Court.<sup>3</sup> But when the status of the plaintiff as co-lessee is denied by the defendant who calls himself the sole lessee, the Civil Court will have no jurisdiction, as the plaintiff must get a declaration of his tenancy under section 59.<sup>4</sup>

In such a suit all the co-sharers should be represented.<sup>5</sup> The mortgagee from a co-sharer who is also in possession with the mortgagor may also be impleaded.<sup>6</sup> In a suit for profits of *shamlat* lands all the co-sharers must be impleaded.<sup>7</sup> Sub-section (2) now ensures this. A ruling chief cannot be sued without the previous consent of the Governor-General in Council as required by section 86, Civil Procedure Code.<sup>8</sup>

In a suit for profits all the co-sharers should be impleaded within limitation, but if some are not, the entire suit will not fail.<sup>9</sup>

A suit under this section is not based on the same cause of action as one under section 230 so as to let in Order 2, rule 2, C. P. C.<sup>10</sup> *Sed qu.* whether this is true now, in view of the widened scope of section 230, where the defendant is the lambardar.

Several co-sharers may join in one suit to claim their respective shares of profits.<sup>11</sup>

<sup>1</sup> *Balmakund v. Chandika Prashad*, Sel. Ca. No. 246.

<sup>2</sup> *Rohan v. Jwala*, 16 All. 333=14 A. W. N. 118 ; *Indo v. Indo*, 16 All. 28=13 A. W. N. 214.

<sup>3</sup> *Mahipat v. Radhu*, 1 Leg. Rem 12 (H. C.) ; *Gangasahai v. Bansi*, 42 All. 64=17 A. L. J. 993 ; *Jamna Das v. Misri Lal*, 57 All. 852=1935 A. L. J. 112=1935 A. I. R. All. 271=1935 R. D. 40=XV U. D. 67.

<sup>4</sup> *Ram Bali v. Kamta Prasda*, 1934 A. I. R. All. 404=XV U. D. (H. C.) 32=18 R. D. 102 ; *Thakur Baksh v. Bhagwan Din*, 1 O. C. 215.

<sup>5</sup> *Udai Ram v. Ghulam Husain*, 2 Leg. Rem 19 (H. C.) ; Rent Act Ruling No. 67, *Contra Balli v. Jagdeo Singh*, XVII U. D. 267=1936 R. D. 259.

<sup>6</sup> *Thakur Baksh v. Bhagwan Din*, 9 O. C. 142.

<sup>7</sup> *Makrand Singh v. Mathoo Lal*, 8 I. C. 742

<sup>8</sup> *Kanhaiya Lal v. Maharajah of Benares*, 46 All. 355=22 A. L. J. 317=1924 A. I. R. All. 422=10 Rev. and Cr. L. J. 159=5 L. R. Rev. 129=1924 R. C. 77=VI U. D. (H. C.) 78=78 I. C. 559=9 R. D. 376.

<sup>9</sup> *Ajaipal Singh v. Hindpal Singh*, 1936 A. I. R. Oudh 193=XVI U. D. 226=1936 O. W. N. 398.

<sup>10</sup> *Chunnalal v. Parbhudial*, 7 A. L. J. 526=6 I. C. 809.

<sup>11</sup> *Pearey Lal v. Jhabba Lal*, 51 All. 994=1924 A. L. J. 1098=XI U. D. (H. C.) 42=10 L. R. Rev. 361.

Arrears of rent which might have been recovered for previous years by defendant cannot be charged to him.<sup>1</sup>

A suit was rejected as not including claims in respect of other khewats in common,<sup>2</sup> or in respect of rent.<sup>3</sup>

A suit by a principal against his agent for profits of villages taken in usufructuary mortgage by the agent with the principal's money lies in a Civil Court.<sup>4</sup>

A purchaser of *khudkasht* plots cannot sue his vendor and other co-sharers for profits, but only for rent after having it fixed under section 36, L. R. Act.<sup>5</sup>

Similarly, the purchaser of a co-sharer's share in a mahal cannot sue him for the profits of the *sir* land in the co-sharer's possession. His remedy is to get the rent fixed and then sue for rent. The rent can be fixed in the profits suit and a decree for it given.<sup>6</sup>

The court has inherent jurisdiction to stay a suit under this section if a question of title as to the estate is being fought out in appeal to the Privy Council.<sup>7</sup>

Pending the decision of a civil suit in the Punjab, a suit for profits in Oudh cannot be stayed as the civil court of either province is not competent to entertain a suit for profits.<sup>8</sup>

**232.** If in a suit under the provisions of section 230 or section 231 it is claimed that either party

Liability to produce accounts in certain cases.

has made collections, such party shall be bound to produce his accounts, including books of the counterfoils of receipts issued by him, and if he does not do so the court may make such presumption against him and pass such orders as to costs as it thinks fit.

1. This is new in form. *Cf.* sub-section (3) of section 226 sub-section (2) of section 227 of the Agra Act of 1926.

2. This section applies to suits for settlement of accounts and share of profits. It will come into operation only when one party, plaintiff or defendant, alleges or is alleged to have made collections. If a plaintiff or defendant admits having made some collections (and the

<sup>1</sup> *Durga Prasad v. Ganga Saran*, 9 Rev. and Cr. L. J. 35=V U. D. (H. C.) 101=1922 R. C. 353=70 I. C. 763.

<sup>2</sup> *Chiranji v. Gopi*, II U. D. 749.

<sup>3</sup> *Khemkaran Das v. Baldeo Singh*, 1926 A. I. R. All. 282=12 Rev. and Cr. L. J. 81=1926 R. C. 88=VII U. D. (H. C.) 75=7 L. R. Rev. 68=92 I. C. 1046=10 R. D. 98.

<sup>4</sup> *Ghansham Das v. Kalyan Das*, 2 L. R. Rev. 19=2 U. P. L. R. (A) 422=7 Rev. and Cr. L. J. 125=62 I. C. 82.

<sup>5</sup> *Kishori Lal v. Parshadi*, 1922 A. I. R. All. 319=V U. D. (H. C.) 124=1922 R. C. 428=77 I. C. 382=7 R. D. 9.

<sup>6</sup> *Sheo Prasad Singh v. Ram Raj Singh*, 1928 A. I. R. All. 763=IX U. D. (H. C.) 279=9 L. R. Rev. 309=12 R. D. 63=112 I. C. 617.

<sup>7</sup> *Bisheshar Baksh Singh v. Dulhin Jadu Nath Kuer*, XI U. D. (H. C.) 175.

<sup>8</sup> *Channan Kuer v. Sahdeo Singh*, XI U. D. (H. C.) 20.

extent of it is challenged, it is to be presumed), he is placed under an obligation to produce his accounts and books of counterfoils of receipts, or the court will make reasonable presumptions against him as to the extent of the collection, *e. g.*, that he collected gross rental.<sup>1</sup>

The duty to produce account books will not be discharged by mere production of the *siaha*.<sup>2</sup>

**233.** (1) In a suit for settlement of accounts under section 230 or section 231 the collections made by a co-sharer shall, in the absence of any custom or contract to the contrary, be treated as having been made on behalf of all the co-sharers.

(2) In any such suit, the valuation of *sir* which is not let and of *khudkasht* which has been cultivated continuously for three years at the date of the suit shall, for the purposes of calculating the amount divisible among the co-sharers as profits, be made at the rates applicable to ex-proprietary tenants; provided that if such *sir* is let the rent payable by the tenant thereof shall be accepted as the fair valuation, unless the court, for reasons to be recorded, decides to make the valuation in some other manner.

1. This is new in form and applies to suits for settlement of accounts and share of profits (1) between a co-sharer and the lambardar and (2) between two co-sharers. Sub-section (1) simplifies the difficulty that was experienced under the earlier Acts, by enacting that any collection made by a co-sharer shall be treated as made on behalf of all the co-sharers unless a custom or contract to the contrary be established. This renders obsolete the rulings noted in the foot-note,<sup>3</sup> and favours the decisions noted in this foot-note.<sup>4</sup>

2. It was held that the usufructuary mortgagee of a share, who under a *kabuliat* executed by the exproprietary tenant collected the whole of the rent from the tenant, could retain only that part of it which corresponded to the share mortgaged to him and account for the rent to the other co-sharers.<sup>5</sup>

<sup>1</sup> *Lalta Prasad v. Harnam Singh*, 1937 A. I. R. Oudh 152=XVII U. D. (H. C.) 196=1936 R. D. 433.

<sup>2</sup> *Nilkanth v. Rup Singh*, 1930 A. I. R. All. 640=XI U. D. (H. C.) 274=11 L. R. Rev. 238=125 I. C. 761=14 R. D. 520.

<sup>3</sup> *Chater Sen v. Mitter Sen*, XV U. D. (H. C.) 1; *Bhoop Ram v. Kedar Singh*, XVI U. D. 23=1936 R. D. 49, *Kanhaiya Lal v. Skinner*, 54 All. 240=1932 A. L. J. 129=XIII U. D. (H. C.) 42; *Govind Ram v. Jugal Kishore*, 1932 A. I. R. All. 245=15 R. D. 383.

<sup>4</sup> *Sewa Ram v. Moti Ram*, XV U. D. 127=15 L. R. Rev. 338, *Madan Lal v. Ram Gopal*, XIX U. D. 140=1938 R. D. 373, *Ram Chandra Swarup v. Sukhbans Lal*, 14 L. R. Rev. 324, *Baij Nath Sahas v. Man Singh*, 1938 A. L. J. 698, in L. P. A. *Man Singh v. Baij Nath Sahas*, 1939 All. 694=1939 A. L. J. 830=1939 R. D. 513; *Gajraj Singh v. Kallu*, 1940 R. D. 207.

<sup>5</sup> *Gopal Sahai v. Nazir Uddin*, 1935 All. 560=1935 B. D. 277.

3. **Custom or contract to the contrary.**—A custom may be difficult to prove but a contract may be inferred from the course of practice followed for a long period or if a co-sharer collected under an arrangement with the lambardar.<sup>1</sup>

Where in a pattidari village, co-sharers hold pattis, which are separately recorded in the revenue papers and pay their revenue separately in respect of those pattis the inference is that the parties had by private arrangement each taken possession of a separate portion of the village and had agreed to appropriate to their own use the profits of those lands and were not accountable to each other with respect to such pattis, except with regard to the land held jointly.<sup>2</sup>

The case of *Ganga Rathi v. Ram Autar*,<sup>3</sup> is not intelligently reported. There, the owner of a 1a. 9p. share sold first his 9 pie share, surrendering 6 bighas of *sir* to the purchaser, and subsequently sold his one anna share with the balance of his *sir* to A, and in a suit for rent by A against his vendor, it was held that as the vendor had become the tenant of the entire body of co-sharers, he could not get a decree for the entire rent of the exproprietary holding, but only for his fractional share in it. A then sued the cosharers under section 227 of the Act of 1926 (new s. 231) for his share of the profits. It was held that he could, reliance being placed on *Harkesh v. Ghasi Ram*.<sup>4</sup> It is not clear whether the objection was as to his right to sue, and it could not be that, or that the co-sharers had to pay profits in respect of the holding not on the basis of the statutory rates but on lower rates.

If each co-sharer in a mahal collected his own share of the profits which included the assumed rent of the *sir* land in his cultivation, the principle to be followed in a suit under the section was not to ascertain the collections made by the defendants and the plaintiff and to test whether these collections were more or less than their legitimate shares by dividing the total collections in accordance with their respective shares with mahal.

If the defendants' collections were less than their legitimate share of the gross rental, they could not be called upon to account, in the absence of evidence to show that there was nothing except the less diligence displaced by the defendants in making collections that prevented them from collecting as large a share of the profits of their own shares as the plaintiffs succeeded in collecting out of the profits of their shares.<sup>5</sup>

<sup>1</sup> *Nawab Ali Khan v. Basanti Lal*, 1936 A. I. R. Oudh 117=XVI U. D. 424=1935 O. W. N. 689=1935 R. D. 336=156 I. C. 95.

<sup>2</sup> *Makrand Singh v. Milhoo Lal*, 8 I. C. 742, *Sobhani v. Jagdeo Singh*, 6 O. L. J. 468=53 I. C. 776.

<sup>3</sup> XIX U. D. 117=1938 R. D. 398.

<sup>4</sup> B. R. 2 of 1935=XVI U. D. 418.

<sup>5</sup> *Sripal Singh v. Nagesher Singh*, 1933 A. I. R. Oudh 280=XIV U. D. (H. C.) 141.



This was a single judge decision. On appeal two judges upset it and held that the amount collected by each co-sharer should be taken into consideration and the account settled as a whole, and that if any co-sharer is found to have collected less than his own share out of the total collections, and the other co-sharers to have collected more than their own shares, the latter should be made liable to account for the same.<sup>1</sup>

As to inference from practice, let us examine the matter closely. In the case of a normal mahal, there would be *sir* and *khudkasht* land in the possession of co-sharers, and tenants paying rents. *Sir* and *khudkasht* have to be valued on the best material available, *e. g.*, on rent paid by the *shikmis* of the *sir* and *khudkasht*.<sup>2</sup> If by some private agreement or arrangement each co-sharer is in possession of some *sir* and *khudkasht* land and is entitled to realise his share of the rent from certain tenants, or from all tenants, there cannot be the least doubt that A, who by his diligence and better management has realised the whole of his share of the rents and profits, cannot be made to hand over any part thereof to any of his less diligent or less fortunate co-sharers.<sup>3</sup>

What usually happens is that each co-sharer by tacit acquiescence of the others takes possession of a certain quantity of culturable *sir* and *khudkasht* land and begins to realise rents from certain tenants. In such a case it is hard to say that there is no private arrangement or agreement authorising such possession and collection and that a court would be justified in every such case in finding for such arrangement or agreement, and then the issues are (i) whether considering the area, situation and quality of the land, and the circumstances attending the fields of and the financial position of the tenants from whom he realises rents, he receives more assets of the entire mahal than he would be entitled to on a fair division, and (ii) whether the possession of, and realisation by, each co-sharer is on an express or implied understanding that the receipts of each co-sharer would be thrown into hotchpotch and divided rateably.

As regards (i), it assumes that every co-sharer cultivates some *sir* and *khudkasht* and realises some rents. If one does not or some do not, there is a further issue as to why he does not or they do not. Unexplained, that fact would negative the view that the possession of, and realisations by, some of the co-sharers were in virtue of some private arrangement or agreement. It may be that he or they had equal opportunity with the others, but failed to avail themselves of it, and the land and tenants pertaining to his or their lot or lots remain

<sup>1</sup> *Nageshar Singh v. Sri Pal Singh*, 8 Luck 665=1934 A. I. R. Oudh 189=XIV U. D. (H. C.) 1935=14 L. R. Rev. 408=17 R. D. 546; *Rukmangad Singh v. Balbhadra Prasad*, VIII U. D. (H. C.) 286=IX U. D. (H. C.) 310=9 L. R. Rev. 332.

<sup>2</sup> *Bhagirathi v. Khet Pal*, 1927 A. I. R. All. 791=VIII U. D. (H. C.) 174=8 L. R. Rev. 177=1927 R. C. 70=102 I. C. 139=11 R. D. 498

<sup>3</sup> *Angad Singh v. Zorawar Singh*, 16 A. L. J. 146=4 Rev. and Cr. L. J. 89=44 I. C. 542.

untouched; in which case no court should help him or them to share in the fruits of the labours of the others. Or it may be that the other co-sharers finding him or them weak or absentees have encroached on his or their land and tenants, in which case the encroaching co-sharers are accountable to him or them. Or again, it may be, that there is some arrangement by which he gets or they get his or their legitimate share of the profits.

*Bhagwant v. Arjun*<sup>1</sup> was a case of the last description. There, all the co-sharers, except two, were in possession of specific plots of land representing their share of the profits and the two realised rents from tenants in lieu of their share.

Where every co-sharer cultivates some *sir* or *khudkasht* or both, and realises some rent, and this has gone on for some years, a private arrangement or agreement authorising such acts may legitimately be, and should be, inferred. As regards *sir* and *khudkasht*, the following cases are conceivable :—

(a) The whole of the culturable *sir* and non-tenancy land is cultivated by the co-sharers, each being and having been for some years in occupation of distinct portions of it. If no annual accounting between the co-sharers has taken place for a fairly large number of years, and each co-sharer has without challenge or objection kept in his pocket the entire profits from such land, it would be a legitimate inference that the land in possession of each corresponded to his proportionate share, neither more nor less, or that such profits together with the rents realised by him from tenants and also not accounted for annually to the other co-sharers, represent his fair proportionate share of the assets of the village or mahal.

Where each co-sharer is in possession of his share of *sir* and *khudkasht*, he alone must bear any loss or deficiency and cannot call upon the other co-sharers to contribute to it.<sup>2</sup>

There, each co-sharer was in possession of specific plots of *sir* and *khudkasht* of more than 12 years' standing, and *khudkasht* of less than 12 years' standing as representing his share in the assets of the mahal. A, one of the co-sharers so in possession, sold his rights and interests to B. B got rent assessed on the *sir*, but not on the *khudkasht* of more than 12 years' standing. A remained in possession of the *sir* and both kinds of *khudkasht* land. B was not allowed to claim from the other co-sharers a deficiency in his share of the profits arising from this state of things.

(b) The whole of the culturable *sir* and non-tenancy land is not cultivated, but some co-sharers are in possession of so much of it as represents their respective shares, while the others are in possession of less, the rest of the land remaining uncultivated. In the absence of any annual accounting between the co-sharers, and of any obstacle preventing the other co-sharers from taking possession of their legitimate shares of

<sup>1</sup> 14 A. L. J. 209—2 Rev. and Cr. L. J. 69.

<sup>2</sup> *Bhagwant v. Arjun*, 14 A. L. J. 209—2 R. and Cr. L. J. 69—32 I. C. 617.

such lands, it would be a fair inference that the co-sharers in possession of their full shares were in such possession under some private agreement or arrangement with the others, and they would not be accountable to such others for their receipts.

(c) The whole of the culturable *sir* and non-tenancy land is cultivated by co-sharers, but the land in the cultivation of each does not correspond to his share, some having more, some having less, than their shares. If there has been no accounting for a large number of years and during this period those in possession of more land than their shares have without challenge or objection pocketed the entire profits of the land in their possession, it would be a fair inference that they realise less than their share of the rents from tenants, and the two represent their respective shares of the assets of the mahal. In such a case they are not accountable to the rest. It would, however, be open to the rest to displace this inference by showing that there are no rent-paying tenants in the mahal, or that the rent-paying tenants have been assigned to one or more of the other co-sharers in lieu of the whole or part of their shares of the assets of the mahal, or that the co-sharers in possession of more land have also realised their full respective shares of the rents from tenants. In such a case, such co-sharers are clearly accountable for the excess land to such of the other co-sharers as have not been in a position to receive the whole of their respective shares of the assets of the mahal.

(d) The whole of the culturable and non-tenancy land is not cultivated by the co-sharers, but some are in possession of more than their respective shares of such land. In the absence of any obstacles placed in the way of the others in cultivating the rest of the culturable lands, considerations similar to those in (c) apply.

(e) The whole of the culturable *sir* and non-tenancy land is not cultivated and each co-sharer is in cultivation of less than his proper share of such lands, the rest remaining uncultivated. In such a case the court may infer a mutual arrangement or it may not; and if it does not, the question is whether a co-sharer called to account is in possession of more than his share of the actually cultivated land; and if he is, he is accountable to the others. At least, such is the effect of the decision in *Angad Singh v. Zorawar Singh*.<sup>1</sup> In *Bhirug Rai v. Hazari Rai*,<sup>2</sup> he was not held accountable. The position is open to grave doubts and cannot be accepted as unhesitatingly true in all cases. The terms of the *wajib-ul-arz* may throw some light on the matter.

If a co-sharer has planted trees on a *sir*, he is bound to account for the profits in the same way as if he had planted wheat.<sup>3</sup>

*Abadi* land occupied by a co-sharer and turned into cultivation has to be taken into account.<sup>4</sup>

<sup>1</sup> 16 A. L. J. 146=4 Rev and Cr L. J. 89.

<sup>2</sup> IV U. D. 825=6 R. D. 406.

<sup>3</sup> *Pearey Lal v. Nathu Singh*, XV U. D. (H C) 24=15 L. R. Rev. 181.

<sup>4</sup> *Beni Kuari v. Muh. Ahsanullah Khan*, 1935 A. I. R. All. 151=XV U. D. (H. C.) 11=15 L. R. Rev. 107=3 A. W. R. 316=18 R. D. 94.

As regard collections of rents, the *wajib-ul-arz* should show the practice in collecting rents. If each co-sharer was entitled to collect his share of the rents, he was entitled to keep what he had collected to the extent of his share and as he was not an agent for the others, he was not accountable to those who through bad luck or want of due diligence had not been able to collect their proper shares.<sup>1</sup>

Under section 245 (1) a lambardar is, in the absence of a contract or usage to the contrary, entitled to collect the rents.

Where by arrangement between themselves, co-sharers make collections, no question of negligence of the lambardar sued as a co-sharer under section 231 arises if the total amount of rents is not collected.<sup>2</sup>

If the defendant had made collections not only on his own account but on behalf of the plaintiff as well, *e. g.*, as *karta* of a joint Hindu family, the plaintiff was entitled to his share of the collections, even though the collections were not in excess of the defendant's share.<sup>3</sup>

As to (ii) *i. e.*, an agreement about accounting for receipts, the practice of a large number of years will be the best guide. If there has been no accounting among the co-sharers for a long period, the inference is irresistible that there was no agreement about accounting. The profits of land cultivated by each co-sharer will be taken into account.

A co-sharer is entitled to no more than what is due on his actual share. If he is recorded as owner of one-third but a competent civil court has held him to be the owner of a fourth share only, although after the decision of the revenue court under appeal, the appellate court will award him profits on the fourth share only.<sup>4</sup>

Where a co-sharer has usufructually mortgaged his share or a part of it, or sold a plot out of it, he and his mortgagee or vendee must be looked upon as one unit, and if they together are in receipt of more profits or are in possession of more *sir* and *khudkasht* lands, than the combined share (taking the net annual rent into account) entitles them to, he must account for the excess profits to a co-sharer who receives less than what he is entitled to.<sup>5</sup>

<sup>1</sup> *Kalka Singh v. Jwala Prasad*, 3 Rev. and Cr. L. J. 105—19 O. C. 326—38 I. C. 89.

<sup>2</sup> *Govind Ram v. Jugal Kishore*, 1932 A. I. R. All. 245—XII U. D. (H. C.) 137—136 I. C. 76.

<sup>3</sup> *Digambar Singh v. Birendra Nath*, 52 All. 436—1930 A. I. R. All. 313—1930 A. L. J. 286—127 I. C. 518—14 R. D. 164.

<sup>4</sup> *Digambar Singh v. Birendra Nath*, 52 All. 436—14 R. D. 164.

<sup>5</sup> *Jadu Nath Singh v. Hanuman Singh*, 53 All. 794—1931 A. I. R. All. 668—1931 A. L. J. 589—12 L. R. Rev. 280—133 I. C. 476—XII U. D. (H. C.) 168—15 R. D. 554, *Sheo Murat Singh v. Dip Narain Singh*, 1937 A. L. J. 1551—1938 R. D. 139; *Bisheshar Singh v. Gaya Baksh Singh*, 1938 A. I. R. Oudh 227—1938 O. W. N. 878—1938 R. D. 755.

Plaintiff and defendants were in exclusive possession of the cultivated portion and in joint possession of the uncultivated portion of a village. The custom as to the latter was that if a co-sharer should cultivate waste land newly broken he would pay rent like a tenant. A co-sharer did break up waste land and cultivated it. *Held*, he had to pay rent as a tenant to the other co-sharers in proportion to the shares held by them.<sup>1</sup> For, rent payable by a co-sharer for land cultivated by him as tenant cannot be taken into account as profits of the other co-sharers in his hands.<sup>2</sup> A co-sharer has to account for *nazranas* received by him.<sup>3</sup>

Where a co-sharer cultivating land avers that he does so as tenant and not as co-sharer, the first thing to see is whether he was a tenant before he became a co-sharer; if not, his possession, though he is recorded as tenant, may be regarded as that of co-sharer, unless of course<sup>4</sup> a definite contract of tenancy after his becoming a co-sharer is proved.

4. Only actual collections made by each co-sharer will, subject to section 232 be taken into account<sup>5</sup> A pre-emptor cannot sue the vendee for profits between the dates of the sale and of mutation of names, which have been collected by the *lambardar* but not paid over.<sup>6</sup>

**234.** In any suit under section 224, section 226, section 227, section 228 or section 231 the plaintiff of parties and form of decree in certain suits. may sue any number of co-sharers collectively, but in such case the decree shall specify the extent to which each of the defendants is affected thereby.

This reproduces in effect section 228 of the Act of 1926.

See notes to the sections specified.

## CHAPTER XIII.

### COMPENSATION AND PENALTIES.

**235.** In this Chapter "tenant" shall include an under-proprietor and a permanent lessee.

Application of this Chapter to under-proprietors, etc.

<sup>1</sup> *Hublal v. Ram Charan*, 3 A. L. J. 472.

<sup>2</sup> *Kalyan Singh v. Raja*, III U. D. 345=4 R. D. 150.

<sup>3</sup> *Narotam Das v. Narain Das*, 6 R. and Cr. L. J. 49=22 O. C. 264=54 I. C. 232.

<sup>4</sup> *Din Dayal v. Tarak Nath*, 1932 A. I. R. All. 241=16 R. D. 369.

<sup>5</sup> *Ram Lal v. Tasoduk Ali*, 2 I. C. 260; *Abdul Rashid v. Abdul Latif*, 28 A. W. N. 68. See also *Balwant Singh v. Gokaran*, 9 All. 519=7 A. W. N. 135; *Jhargad Mal v. Durgadas*, I U. D. 372=1 Rev. and Cr. L. J. 100; *Nilkanth v. Rup Singh*, XI U. D. (H. C.) 274=11 L. R. Rev. 230.

<sup>6</sup> *Srikishen Lal v. Atmaram*, 19 All. 261=17 A. W. N. 45.

This is new and makes the provisions of this chapter applicable to under-proprietors and permanent lessees as they are applicable to tenants.

For the meaning of "under-proprietor" see section 3 (3) and note No. 27 to section 3 *supra* and for that of "permanent lessee" see section 3 (15) *supra*.

**236.** If any person—

Tenant entitled to compensation for illegal exactions.

- (a) knowingly collects any sum or produce in excess of the amount due as an arrear of rent or *sayar* ;
- (b) charges interest on an arrear of rent at a rate exceeding that allowed by this Act ;
- (c) infringes the provisions of section 90 or collects any sum which is irrecoverable under the provisions of section 91 ;
- (d) collects any rent of which payment has been remitted in accordance with the provisions of this Act, or, before the expiry of the period of suspension, collects any rent of which payment has been suspended in accordance with the provisions of this Act ;
- (e) without reasonable cause, credits a payment made towards rent or *sayar* otherwise than to rent or *sayar* or otherwise than in accordance with the provisions of section 130 ;

the tenant or lessee or licensee of *sayar*, as the case may be, shall be entitled to recover from such person such compensation not exceeding two hundred rupees as the court having regard to the circumstances of the case, may decree, in addition to any amount or value of any produce which may have been so collected, charged or credited.

1. **Clause (a)** Corresponds to section 48 of the Agra Act of 1926 and sections 17 and 108 (9) (a) of the Oudh Act. Section 48 of the Act of 1926 reproduced section 36 of the Act of 1901.

The excess collection must have been knowingly, *i. e.*, with knowledge that excess was being collected. In a case of dispute as to the amount or quantity, will the landholder escape the penalty by saying that he did not act knowingly, but according to his knowledge or belief.

The head lessor is not the landholder of a sub-tenant of his lessee.<sup>1</sup> Collects implies a collection to have been made privately and not by means of a *suit*,<sup>2</sup> and means collected after demand.<sup>3</sup> Where the defendant sublet to the plaintiff for the purpose of raising crops to be

<sup>1</sup> See *Ganga v. Mahan*, 4 A. W. N. 355.

<sup>2</sup> *Ram Prasad v. Ram Tahal*, *Marsh.* 655 ; *Chandramani v. Devendra*, *ib.*, 420.

<sup>3</sup> *Marsh.* 656.

shared between them, and the defendant misappropriated the whole crop, the plaintiff's suit for a share thereof was held not to fall under section 48 of the Act of 1926<sup>1</sup>. A suit by a grove-holder for the value of fruits appropriated by his landholder was not under the section,<sup>2</sup> because there was no exaction as required by the old Act. Now this is no longer good law.

If more rent than what is payable is knowingly collected he has right to sue under section 236 (a).<sup>3</sup>

If the rent realised is what has been previously paid, though more than what was the rent payable, exaction had to be proved<sup>4</sup> under the Act of 1926. Now however the word "exact" has been replaced by the words "knowingly collects."

Where by mistake or some confusion the right amount of the rent of a tenant is collected twice over by two different co-sharers, no question of wrongful collection under section 236 (a) arises, and a suit for the excess amount realised lies in a civil court, e.g., a small cause court.<sup>5</sup>

An amicable recovery of revenue will bring the case under the section.<sup>6</sup>

**Suit.**—A suit under section 236 (a) is item No. 16 of Group A of the Fourth Schedule; it is triable by an Assistant Collector of the first class, irrespective of value with a right of appeal to the civil court. The limitation is three months from the date of the collection and court-fee payable is eight annas.

2. **Clause (b)** is new—Excess interest charge is now penalised. The remarks made as to suits under clause (a) apply.

Exaction of interest not due or more than what is due is under the section.<sup>7</sup>

This clause gives a right of suit for excess of interest realised. The suit is No. 16 of Group A of the Fourth Schedule. The limitation is three months from the date of the charging. The court-fee is 8 annas. Other remarks made as to suits under clause (a) apply.

3. **Clause (c)** The infringement spoken of here is the taking of a premium for admitting a tenant to tenancy or imposing a condition of service, gratuitous or paid on such tenancy or levying an illegal cess. A suit under the clause is in No. 16 of Group A of the 4th Schedule. The remarks made in respect of suits under clause (a) apply.

<sup>1</sup> *Ghuribullah Pramanik v. Fakir Mahomed*, 10 W. R. 213

<sup>2</sup> *Rubi Partab Singh v. Ram Prasad*, 45 All. 725=21 A. L. J. 646=V U. D. (H. C.) 284=10 Rev. and Cr. L. 14=4 L. R. Rev. 331=1922 R. C. 467.

<sup>3</sup> *Ganpat v. Ram Gopal Singh*, 1933 A. I. R. All. 954=14 L. R. Rev. 679=XIV U. D. (H. C.) 123

<sup>4</sup> *Ganpat v. Ram Gopal Singh*, 1933 A. I. R. All. 954=14 L. R. Rev. 679=17 R. D. 798=XIV U. D. (H. C.) 123

<sup>5</sup> *Abdul Julil Khan v. Gulab Singh*, 1933 A. I. R. All. 392=14 R. Rev. 252=XIV U. D. (H. C.) 39.

<sup>6</sup> *Mohan Lal v. Ram Ratan*, VI U. D. (H. C.) 486=6 L. R. Rev. (Oudh) 91=2 O. W. N. 439=12 O. L. J. 56=83 I. C. 538.

<sup>7</sup> See *Tufassul Hussain v. Badle*, II U. D. 113=3 R. and Cr. L. J. 100.

**4. Clause (d)** A suit for the recovery of any remitted or suspended rent is prohibited. This clause provides a suit for compensation for collection of a remitted rent or a suspended rent before the expiry of the period of suspension. In the earlier Acts there was no specific provision for the recovery of such compensation. Section 73 and section 74(2) of the Agra Act of 1926 and section 19-A of the Oudh Act were the nearest approach to it. It was held that a voluntary payment of a suspended rent was not prohibited.<sup>1</sup>

**Suit.**—A suit under the clause is in Schedule IV, Group A, No. 16. The limitation is six months, the other remarks made in respect of suits under clause (a) apply.

**5. Clause (e)** This clause gives a right to sue for compensation for non-compliance with section 130. In the Act of 1926 section 142 provided for a suit for compensation for the reasons stated in this clause.

**Suit**—The suit is in No. 16 of Group A of the 4th Schedule and the remarks made as to clause (d) apply. Limitation of six months runs from the date when the payment was wrongly credited.

**6. The tenant shall be entitled, etc**—The maximum amount recoverable as compensation is Rs. 200 and not double the amount of the rent as under section 48 of the Act of 1926.

**237.** When in any suit for arrears of rent the court finds that the landholder has without reasonable cause refused or neglected to deliver to the tenant a receipt, or neglected to prepare and retain a counterfoil of the receipt in the manner prescribed by section 133, in respect of any year to which such suit relates, it may award to the tenant such compensation, not exceeding double the amount or value of the rent paid, as it may decree.

Power to award compensation in suit

This reproduces in effect section 143 of the Act of 1926.

The section imposes upon the landholder a duty to give a proper receipt for rent paid and retain a counterfoil thereof, failure in any one of which respects exposes him to the penalty mentioned in the section should a question of such payment arise in a suit between the landholder and the tenant. Does any suit include a suit in a Civil Court?

**238.** If a landholder collects any rent of which the payment has been remitted in accordance with the provisions of this Act, or, before the expiration of the period of suspension, collects any rent of which the payment has been suspended in accordance with the provisions of this Act, the whole of the revenue or rent, as the case may be, remitted or suspended in his favour shall become immediately payable by him.

Penalty for collecting rent remitted or suspended.

This reproduces the effect of section 76 of the Agra Act of 1926.

<sup>1</sup> *Emperor v. Ram Sarup*, 13 A. L. J. 619—1 Rev. and Cr. L. J. 23—30 I. C. 722.



**239.** If any person habitually refuses, or neglects, to give receipts in accordance with the provisions of section 133, he shall, on conviction by a criminal court, be liable for a first offence to a fine not exceeding one hundred rupees and for a second or subsequent offence to imprisonment for a term not exceeding three months or to fine not exceeding five hundred rupees or to both.

This section is new and provides for punishment for habitual refusal or neglect to give receipts in accordance with the provisions of section 133.

**240.** (1) Any person against whom a decree or order of ejectment from a holding or any portion thereof has been executed under the provisions of this Act, or under the Agra Tenancy Act of 1926 or the Oudh Rent Act, 1886, and who, so long as such decree or order remains in force, re-enters or attempts to re-enter, into occupation of such holding without the written consent of the person entitled to admit him as tenant, shall be presumed to have done so with intent to intimidate or annoy the person in possession, within the meaning of section 441 of the Indian Penal Code.

(2) If a landholder enters or attempts to enter upon a holding in the possession of a tenant with the object of dispossessing him of such holding, otherwise than under the provisions of this Act, such landholder shall be presumed to have done so with intent to intimidate or annoy such tenant within the meaning of section 441 of the Indian Penal Code.

(3) Where a person is convicted of an offence of criminal trespass in the circumstances stated in sub-section (1) or sub-section (2), and it appears to the court convicting him that any person has, by reason of anything done in the course of the committing of the offence, been dispossessed of any land, the court may, if it thinks fit, order the dispossessed person to be restored to the possession of such land.

1. Subsection (1) corresponds to subsection (1) of section 95 of the Agra Act of 1926. Subsection (2) is new. Subsection (3) corresponds to subsection (2) of section 95 of the Agra Act of 1926.

2. Written consent of the person entitled to admit as tenant is necessary. Oral evidence of re-admission is not admissible<sup>1</sup> Mere acceptance of rent does not necessarily prove readmission to tenancy.<sup>2</sup>

<sup>1</sup> *Badri Narain v. Suraj Ram*, 1938 R. D. 652 ; *Wali Muhammad v. Beni Chand*, B. R. 9 of 1934—XV U. D. (S. D.) 28.

<sup>2</sup> *Radhey Mohan Lal v. Rachhpal Singh*, 1938 R. D. 788.

## CHAPTER XIV

## PROCEDURE AND JURISDICTIONS OF COURTS

*General provisions*

**241.** In section 246, sub-section (2) of section 247, section 286 and section 287, the words "proprietary right" shall include the right of an under-proprietor.

Meaning of "proprietary right" in certain cases.

This is new but not a departure from established law.

**242.** Subject to the provisions of section 286 all suits and applications of the nature specified in the Fourth Schedule shall be heard and determined by a revenue court, and no court other than a revenue court, shall, except by way of appeal or revision as provided in this Act, take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which relief could be obtained by means of any such suit or application.

Suits and applications cognizable by revenue courts only.

*Explanation.*—If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical with that which the revenue court could have granted.

1. This reproduces in effect section 230 of the Agra Act of 1926 and corresponds to the first paragraph of section 108 of the Oudh Act, and section 167 of the Act of 1901.

Section 230 of the Act of 1926 also corresponded to the opening words of sections 93 and 95 of the Rent Acts, section 23 of Act X, and section 1 of Act XIV of 1863. Section 93 of the Rent Acts related to suits and section 95 to applications. The Tenancy Act of 1901 reduced almost all the matters comprised in the clauses of section 95 to suits.

2. The word "adequate" has now been removed from before "relief," with the result that Civil Court's jurisdiction in matters under the Act will be further restricted. If the Revenue Court can grant relief, though not an adequate one, according to the plaint allegation, the Civil Court's jurisdiction will be barred. For instance, if the relief asked for is a declaration as to plaintiff's title, say as adopted son, or as widow or daughter, or validity or invalidity of a document or lease, and the main purpose of the suit is to get one of the relief which the plaintiff can get under the Act, *e. g.*, ejectment, or a relief under sections 59 or 61 or 63 the Civil Court will have no jurisdiction to try the suit.

The test of jurisdiction is whether a Revenue Court can grant relief in respect of the cause of action, and not whether the particular relief asked for in the plaint could have been so granted. This was also the approved view under the Act of 1901.

What the expression "of any suit or application based on a cause of action in respect of which relief could be obtained by means of any such suit or application" means is—look at the allegations of fact in the plaint or application which constitute the plaintiff's cause of action; then determine whether on such allegations a Revenue Court constituted under the Tenancy Act could or can grant relief, such relief being one of those which it is competent to grant under the Fourth Schedule. If your answer is in the affirmative, refer the plaintiff to a Revenue Court if he is not already there.

If the plaintiff can, on the cause of action which is the foundation of his suit, get relief from the Revenue Court, he will not be permitted to resort to a Civil Court, because the relief he asks for cannot in words be granted by a Revenue Court.<sup>1</sup>

As under the Rent Acts, jurisdiction cannot be extended so as to give courts of special jurisdiction authority to determine matters which are properly within the cognizance of Civil Courts<sup>2</sup>. At the same time full effect must be given to those special provisions, and jurisdiction will not be restored to the ordinary tribunals merely by investing the suit or application with a different form any of those enumerated in the Groups: the Revenue Courts will have jurisdiction not merely in these suits or applications, but in all cases in which a suit or application might have been made,<sup>3</sup> based on a cause of action in respect of which relief could be obtained by means of such suit or application.

Where a question of jurisdiction is raised the court must try and decide it.<sup>4</sup>

Defect of jurisdiction cannot be pleaded for the first time in execution of a Civil Court decree in a suit which was within the exclusive jurisdiction of a Revenue Court when sections 290, 291 would have been applicable to the suit.<sup>5</sup>

Plaintiff in a civil suit can not urge in Letters Patent Appeal that the Revenue Court was the proper *forum*.<sup>6</sup>

<sup>1</sup> *Durji v. Bala Kunwar*, 1932 A. L. J. 521=1932 A. I. R. All. 460=16 R. D. 434=XII U. D. (H. C.) 143=13 L. R. Rev. 282 (suit for invalidating a lease by a joint tenant and for possession in revenue court); *Ram Pargash v. Ajodhya Dat Uda Partab*, 12 O. C. 90=2 I. C. 269.

<sup>2</sup> *Mahadeo v. Bachu*, 11 All. 224=9 A. W. N. 87; *Shankar Sahai v. Dindial*, 10 A. W. N. 145.

<sup>3</sup> *Mahesh v. Ras Chander Rai*, 13 All. 17=10 A. W. N. 239.

<sup>4</sup> *Bhoga Singh v. Pokhar Singh*, 8 O. C. 353.

<sup>5</sup> *Cantonment Board v. Kishan Lal*, 57 All. 1 (F. B.)=1934 A. L. J. 409=1934 A. I. R. All. 609=XV U. D. (H. C.) 105=15 L. R. Rev. 326=149 I. C. 636=3 A. W. R. 721=18 R. D. 275.

<sup>6</sup> *Anrudh Rai v. Sant Prasad Rai*, 1935 A. I. R. All. 746=XVI U. D. 216=1935 R. D. 182=155 I. C. 589.

Where in execution of a rent court decree a house is sold and an application under Order 21, Rule 89, Civil Procedure Code is allowed up to the Board of Revenue, the auction purchaser can not sue in a Civil Court that the decision was *ultra vires* and the sale to him should be confirmed.<sup>1</sup>

Section 242 does not bar the granting of an application for restitution under section 144, Civil Procedure Code, to a party successful in the appeal from a decree under which he was dispossessed even as against a tenant let in by the person in whose favour the reversed decree was passed and who was put in possession under it.<sup>2</sup>

*Kunj Behari Lal v. Ghansham Das*<sup>3</sup> should be noted. *A* purchased an 8 anna share in a mahal from *C*, the lambardar being *B*. *B* paid out of court to *A* the profits due for two particular seasons after the sale. *C* sued *B* for the profits of those seasons and obtained a decree and satisfaction thereof. Then *B* sued *A* in a Civil Court to recover what he had paid to *A*, interest, damages, and the costs of defending *C*'s suit. The arbitrators to whom the matter was referred awarded to *B* a lump sum, which came up to about 80 per cent. of the amount claimed, but gave no reasons, which they were not bound to. Now, *A* sued *B* in a Revenue Court for the profits of those very seasons. One of the defences was that the Civil Court which had exclusive jurisdiction in the suit, *B* vs. *A*, had decided the matter and therefore the Revenue Court could not entertain the suit. The court did not decide the point, but proceeded to decree *A*'s suit on the ground that it was impossible to say that the matter now in dispute was decided in the former suit, although the decree awarded therein must have included some at least of the amount claimed for profits. The case is not an authority for anything in the nature of a rule of law.

Two things are necessary to found special jurisdiction, *viz.*, (1) the parties must fill the positions assigned to them in the Act; and (2) the relief awardable must be such as a Revenue Court is competent to grant.

3. Subject to the provisions of section 236—That section enjoins the Revenue Court to refer to a Civil Court an issue as to proprietary title, and gives a right of appeal to the Civil Courts should the plea of proprietary title be raised in the appeal.

4. Suit not between the parties indicated.—The Tenancy Act, by referring to the sections which relate to various suits and applications mentioned in Schedule 4, indicates clearly the parties to these suits and applications. Suits which are not between the parties so indicated will not come under the Fourth Schedule. In considering whether a party to a suit is one of those contemplated by the section under which the suit

<sup>1</sup> *Chhakauri Khan v. Pir Baksh*, 31 All. 279—2 I C 32.

<sup>2</sup> *Sukhan Singh v. Uma Shankar*, 1934 A. L. J. 1229—1935 A. I. R. All. 65—XV U. D. (H C.) 294—16 L. R. Rev. 20—152 I. C. 663—1934 A. L. R. 1023—4 A. W. R. 1001—18 R. D. 502.

<sup>3</sup> 1922 A. I. R. All. 397—8 Rev. and Cr. L. J. 155—4 U. P. L. R. (A.) 3—65 I. C. 530.

is brought one must keep in mind the provisions of clause (1) of section 3, that words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, are to include the predecessors and successors in right, title or interest of such person. For instance, the heir of an occupancy tenant who succeeds to and takes up the holding of the deceased is the occupancy tenant for all purposes; and hence a suit for arrears of rent of the holding due from the deceased will lie against him. The office of a lambardar is personal. His heir cannot be said to be his successor in the right, title or interest in the lambardari. See note No 9 to section 230. Similarly, a suit under section 183 can be brought only by a tenant against his landholder. See notes to section 183. See also notes to section 59 and section 61.

Sureties are not liable to be sued in a Revenue Court.<sup>1</sup> A landholder may sue the principal or the surety first, as he is advised.

*Suit between landholders and tenants*—As a tenant can apply to a Revenue Court for declaration of his status, we find that section 288 expressly provides that should the defendant in a civil suit set up a tenancy, an issue on the point should be referred to the Revenue Court, and the suit stayed until the final disposal thereof, and the decision should be according to the final verdict of the Revenue Court. We have seen that where the status of the defendant as tenant is admitted, a suit for any of the reliefs mentioned in the Fourth Schedule must be brought in a Revenue Court. In most of these matters the landholder is the only person who can sue or apply.

A suit by a person for a declaration that he is a tenant lies in a Revenue Court. Any suit brought by a person, admitting himself to be a tenant of the defendant, must lie in a Revenue Court and if the defendant admits that the plaintiff is a tenant, the question as to the exact relation between the parties and the incidents, nature, class, extent and terms of the tenure can be determined by a suit by either party under section 61.

See note 7 to section 59, and note 17 to section 183 where the question of jurisdiction is discussed.

When a mortgagee of an occupancy tenant forecloses, the landholder may sue to eject him, but this does not prevent him from getting a Civil Court declaration that the mortgage and decree are null and void so far as he is concerned.<sup>2</sup>

Part B of section 108, Oudh Rent Act, which related to suits by under-proprietors or tenants against proprietors or landlords, was held not to include a suit by a tenant against a stranger who kept him out of possession.<sup>3</sup> This will also be so now

<sup>1</sup> *Muhtab v. Debi*, 6 A. W. N. 241.

<sup>2</sup> *Lachmi Narain v. Kalka Prasad*, 13 A. L. J. 49=26 I. C. 419.

<sup>3</sup> *Gaya Din v. Lodhi*, 2 Luck. 137=1927 A. I. R. Oudh 108=VIII U. D. (H. C.) 144=8 L. R. Rev. 145=1927 R. O. 145=4 O. W. N. 109=100 I. C. 199=11 R. D. 4; *Baboo v. Lotan*, 1927 A. I. R. Oudh 377=VIII U. D. (H. C.) 92=8 L. R. Rev. 97=1927 R. O. 52=93 I. C. 57=10 R. D. 182.

In the first mentioned case the plaintiff alleged himself to be the tenant of a land but was never in actual possession of it, though he paid rent for it to the landlord who accepted it, and who was impleaded in the suit. He sued for possession. The suit was against a person who had cultivated it without a lease or contract from the landlord and kept the plaintiff out of possession. The suit was held outside the scope of section 108(10), because the plaintiff had never been in possession and his title had to be tried out and found in his favour before he could get a decree. The same held good in *Agra*. This was also the view in *Muhammad Mehdi v. Ram Dei*.<sup>1</sup>

In a suit by a landlord in relation to rent or for ejectment or by a tenant to establish his tenancy, the relation of landlord and tenant has to be admitted before section 242 will apply.<sup>2</sup>

Tenants in by a thekadar become tenants of the owner on the expiration of the theka. The owner's suit for ejectment of any such tenant section 242 will apply.<sup>3</sup>

A sued B in a civil court for rent and for possession in default in respect of a plot. B pleaded tenancy under a court decree. The civil court can look into the decree whether B is a tenant, and, if it finds that he is not, can dispose of the suit according to law.<sup>4</sup>

*Suit between co-sharers.*—See notes to sections 230, 231. When a person poses as lambardar, and his position as such is denied, section 233 (e), Land Revenue Act, shows that he cannot go to a Civil Court to have his status declared; and, if he has been appointed as a lambardar, the co-sharers cannot go to a Civil Court to set aside the appointment. Where a person sues as lambardar for arrears of revenue, and the defendant denies his position, section 286 points out the procedure to be followed.

The question whether a person lawfully in possession as mortgagee must give up possession to his mortgagor when the latter acquires exproprietary rights is not within the section and may be agitated in a Civil Court.<sup>5</sup> A suit for profits of land wrongfully received by a vendee is a Small Cause Court suit.<sup>6</sup>

A co-sharer may sue in a Civil Court another who has dispossessed him from joint possession of a plot of land,<sup>7</sup> or under section 180, *q. v.*

A suit for mesne profits against persons, one of whom is the lambardar but who in law has no right to any share in the mahal, who have kept the plaintiff out of possession of his property in the mahal, is one

<sup>1</sup> XII U. D. 59—12 L. R. Rev. 31.

<sup>2</sup> See *Chandrika Bakesh Singh v. Raghu Nath*, 16 O. C. 105—18 I. C. 284.

<sup>3</sup> *Gopal v. Jhau Lal*, 22 O. C. 52—6 O. L. J. 176—51 I. C. 402.

<sup>4</sup> *Muhammad Ali Raza Khan v. Menda*, 6 O. C. 341.

<sup>5</sup> *Ghisalal v. Ram Autarlal*, 9 A. L. J. 547—15 I. C. 488.

<sup>6</sup> *Bhola Nath v. Ghure*, 22 I. C. 816.

<sup>7</sup> *Baldeo v. Mohan*, 1924 A. I. R. All. 865—10 Rev. and Cr. L. J. 149—1924 R. C. 92—VI U. D. (H. C.) 66—5 L. R. Rev. 113—84 I. C. 1000—9 R. D. 366.

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against trespassers and therefore maintainable in a Civil Court,<sup>1</sup> but a co-sharer (or his lessee) who has appropriated more than his share of the land or assets is not a trespasser and hence a suit for mesne profits cannot be brought against him in a Civil Court.<sup>2</sup>

Chapter XII does not apply to co-sharers in a tenancy. Hence a suit for profits in respect of a holding,<sup>3</sup> or of a larger area occupied by one of the co-sharers lies in a Civil Court.<sup>4</sup>

*Suit between proprietor and rent-free grantee.*—There is no provision in the Act under which a person can go to a Revenue Court for a declaration that A is or is not rent-free grantee; and hence, apart from *res judicata*, a Civil Court is the proper forum for a suit for such a declaration.<sup>5</sup> Where a proprietor sues to resume or to have rent or revenue assessed on land held rent-free the defendant may plead—

- (1) that the land is not liable to resumption under section 195;
- (2) that it is exempt altogether under section 191;
- (3) that it is not liable to have rents assessed, as (a) it was not held on a grant or (b) he has acquired proprietary rights in it under section 192 of this Act, or section 93, Land Revenue Act;
- (4) that he is not liable to have revenue assessed on it as he holds it revenue-free;

The defendant cannot apply or sue for any of the matters mentioned in (1), (2) and (3) in a Revenue Court; and hence a suit for any such matter may be brought in a Civil Court. As regards (4), it appears that if the land was given revenue-free conditionally or for a term, and the Settlement Officer or the Collector has assessed that land to revenue, section 233 (j), Land Revenue Act, bars any enquiry by the Civil Court and if in the case of a land not recorded as revenue-free, the Settlement Officer assesses it to revenue under section 92 (3), Land Revenue Act, for failure of the holder to prove his title to hold revenue-free or reports the matter to the Government under sub-section (2) of the same, the order of the Government is final and cannot be challenged in a civil suit.<sup>6</sup>

*Conclusion.*—It therefore appears that though the words “in respect of which relief could be obtained by means of any such suit or application,” are general, they mean only “brought or made by the plaintiff or applicant.”

<sup>1</sup> *Sheobaran Singh v. Bhagwan Sakai*, 41 All. 286=17 A. L. J. 313.

<sup>2</sup> *Aminulla v. Hajira*, 3 A. L. J. 767=26 A. W. N. 232.

<sup>3</sup> *Data Ram v. Dhara*, 1938 A. I. R. All. 375=1938 A. L. J. 519=1938 R. D. 725.

<sup>4</sup> *Ganga Sakai v. Bansai*, 42 All. 64=17 A. L. J. 993=1 U. P. L. R. (A.) 129; *Jamna Das v. Misri Lal*, 57 All. 852=1935 A. L. J. 112=1935 A. I. R. All. 271=XVI U. D. 67.

<sup>5</sup> But see *Muhammad Abdul Ghafur v. Barbar*, 12 A. L. J. 303=25 J. C. 206.

<sup>6</sup> See *Zalim Singh v. Ujagar Singh*, 3 All. 167.

5. **Suits, etc., of the nature specified.**—The Board, as has already been seen, has ruled that the suits mentioned, irrespective of the status of persons by or against whom they are brought, are meant to be included by these words, and therefore a suit by an assignee of arrears of rent is cognisable exclusively by Revenue Courts. Whatever may have been the correct view under the Rent Acts, the Tenancy Act, by indicating the sections clearly as the basis of the various suits, shows unmistakably the parties between whom such suits may be brought.

6. **Of the nature specified.**—These words extend the exclusive jurisdiction of Revenue Courts to suits which are not mentioned in the Fourth Schedule, but are of the nature specified therein.<sup>1</sup> The Court before which a question of jurisdiction is raised has to consider whether, the facts alleged in the plaint being taken to be true, a Revenue Court can grant the plaintiff any of the reliefs contemplated in that schedule, and whether the real effect of granting the relief sought would be to award one of such reliefs. The Court must therefore look to the substance of the plaint and not to its form only, and see what the plaintiff substantially and really wants. For instance *A* may go to a Civil Court to get a declaration that he is the adopted son or widow of *B*; but if the real object of the suit is to get *A* declared as against the landholder, the successor to a holding of *B* deceased, the Civil Court will not help him, see note 7 to section 59.<sup>2</sup>

As two learned judges observed in *Moola v. Bhuriya*,<sup>3</sup> where from the plaint, as framed by the plaintiff, it is deducible that the sole object is really to obtain declaration of his right to a tenancy, the suit is triable by a Revenue Court, though one of the reliefs asked for is such a relief as could, if that alone had been asked for, be entertained by a Civil Court. The thing to consider is the eventual object of the plaintiff and if he can attain the object by a suit in a Revenue Court he must go there. But this does not mean that in every case, where two reliefs have been joined in the same plaint, one by itself cognisable by the civil and the other by the Revenue Court, it would not be proper to permit the plaintiff to strike out the reliefs properly cognisable by the Revenue Court and pursue the relief properly cognisable by the Civil Court. In this case, the entire estate of a deceased was an occupancy holding, as appeared from the body of the plaint. The plaintiff asked for a declaration that he was the adopted son of the deceased and in possession of his estate, and that the defendant be enjoined not to disturb the possession of the plaintiff. It was held that the essential object was to get a declaration as to the plaintiff's right to the tenancy, although if he had asked for the declaration alone he could have gone to the Civil Court.

<sup>1</sup> See *Misri Lal v. Gopi*, 51 All. 114—1929 A. I. R. All. 538—12 R. D. 562.

<sup>2</sup> But see *Ramdhari v. Babu Lal*, 3 U. P. L. R. (A.) 21—62 I. C. 101.

<sup>3</sup> 1929 A. I. R. All. 613—1929 A. L. J. 1026—118 I. C. 583—XI U. D. (H. C.) 35—10 L. R. Rev. 356—12 R. D. 670; *Ram Pargash v. Aditya Dat Udai Partab*, 12 O. C. 90—2 I. C. 269.



Jurisdiction depends on the real nature of the suit and not on its form. Questions as regards tenancy rights are within the exclusive jurisdiction of revenue courts.<sup>1</sup>

Where on the allegations in the plaint, the court has jurisdiction, but on the evidence and facts the plaint allegations are found to be untrue or false, the suit ought to be dismissed, and the plaint should not be returned for presentation to the proper court.<sup>2</sup>

A suit in a Civil Court under s. 9. Specific Relief Act, as to an occupancy holding, is not independent to the provisions of this Act, and where the allegations in the plaint show the suit to be cognizable by a Revenue Court, the Civil Court acts without jurisdiction in entertaining it.<sup>3</sup> If plaintiff does not admit defendant to be co-tenant with him as claimed by the defendant, and sues within limitation from his ouster, the suit in a civil court is not bad.<sup>4</sup>

On the other hand, if *A* claims a holding and the landholder denies his status as a tenant, and *A* is not in possession, a suit by the landholder for a declaration that *A* is not his tenant, though very similar to a suit under section 60 does not fall therein, for the relief that may be granted is that a person named is the tenant of a holding and not that he is not such tenant.<sup>5</sup> If, however, the landholder, demands a declaration that *B* and not *A* is his tenant, the Revenue Court would be the proper forum. If *A* is in possession of the holding, a suit by the landholder for a declaration that *A* is not his tenant and for his ejectment would be framed as a suit against a trespasser, and though very similar a suit under section 58 of the Act of 1901 (present section 175) does not fall therein. If the landholder alleges that the commencement of *A*'s occupation was as tenant, but that for some reason, *e.g.*, denial of title, he has become a trespasser, the real object of the suit is to get ejectment of a tenant and a Revenue Court is the proper forum. The single judge case of *Ali Jafar v. Phulmati*,<sup>6</sup> seems to be opposed to, though it is distinguishable from it, inasmuch as *A* claimed proprietary rights. The seeming opposition lies in the decision to the effect that though the landholder admitted the commencement of *A*'s occupation to be as a tenant but alleged that somehow the tenancy had terminated (by denial of title and successfully setting up by *A* of proprietary title in himself at settlement), the landholder's suit to oust *A* was framed as against a trespasser and therefore lay in a Civil Court. But there was also an alternative prayer that if *A* was found to be

<sup>1</sup> *Het Kuar v. Tej Pal Singh*, 1933 A. L. J. 1286—XIV U. D. (H. C.) 87; *Jangali v. Naubat*, 1934 A. I. R. All. 680—XV U. D. (H. C.) 75—15 L. R. Rev. 397—18 R. D. 250.

<sup>2</sup> *Durga Prasad v. Om Prakash*, 1938 A. I. R. All. 39—XIX U. D. (H. C.) 22—1933 R. D. 49.

<sup>3</sup> *Khushnud Husain v. Janki Prasad*, 53 All. 532; *Rajwanta Kuar v. Mahabir Rai*, XII U. D. (H. C.) 63—12 L. R. Rev. 47—15 R. D. 785.

<sup>4</sup> *Brijnarain Lal v. Gokul Prasad*, 1935 A. L. J. 813—XVI U. D. 485

<sup>5</sup> *Narain Rao v. Kalka*, II U. D. 187; *Musaffur Ahmad v. Murtaza Husain*, XIV U. D. (H. C.) 81.

<sup>6</sup> 13 A. L. J. 843—30 I. C. 546.

a tenant, a declaration to that effect be granted. The reason assigned by him is "It is clear from the written statement put in by the defendants (A) in this case that any suit (i.e., a suit by the landholder-plaintiff for a declaration under section 60) would be resisted by the defendants on the allegation that they were in proprietary possession of the land in suit. The question whether there is or is not a tenancy in existence between the parties calls for determination in some court or other. Strictly speaking, on the pleadings as they stand in the case before me, the existence of a tenancy is denied by both parties. The plaintiff says that, whatever they may once have been, the defendants are now mere trespassers. The defendants say that they are now in possession as rightful owners. It is conceivable that the Court, after trying out the issues of fact, might come to the conclusion that the plaintiff's allegations as to the determination of the tenancy were based upon an error of law and that, as a matter of fact, *the defendants were in possession as tenants. If so I think the plaintiff is entitled to a declaration.* The case is not covered by section 95, clause (b) of the Tenancy Act (of 1901) which refers back to section 6 of the same Act in which the different classes of tenant are specified."

The learned judge relied on *Zubeda v. Sheo Charan*,<sup>1</sup> *Chauharja Singh v. Sarabjit*,<sup>2</sup> and *Raja Ram v. Moti Begam*.<sup>3</sup> In 22 All. 83, A purchased the mortgagor's right in certain land, the subject of a usufructuary mortgage, and redeemed the mortgage, but did not obtain possession of four plots of land on which the mortgagee had planted trees. A served notice on the mortgagee under section 36 of Act XII of 1881 in respect of these plots. The Revenue Court held that the relation of landlord and tenant did not exist between the parties and directed A to seek his remedy in a Civil Court. A sued to eject the mortgagee in a Civil Court. The only point argued was that on account of the notice under section 36, A was estopped from saying that the defendant was not his tenant, and therefore A should have proceeded in a Revenue Court. The Court having decided that the relation of landlord and tenant did not exist between the parties could grant no relief whatever. The case in 10 A. L. J. 85, was somewhat similar. The case in II U. D. 755, was similar to 13 A. L. J. 843 and was also decided by a single judge, who on the findings of fact and against the wishes of the plaintiff granted a declaration that the defendants were tenants of the plaintiff and held that denial of title is no ground for ejectment of an agricultural tenant, for which he relied on *Ram Sukh v. Gokulchand*.<sup>4</sup> Neither of those cases is exactly in point or supports the view of the learned judge in 13 A. L. J. 843.

As to suits between two persons claiming a tenancy as rivals see note 7 (iii) to section 59 at p. 323 *ante*.

As to validity of leases, see note 7 to section 59 at p. 318.

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<sup>1</sup> 22 All. 83.

<sup>2</sup> 10 A. L. J. 85.

<sup>3</sup> II U. D. 755.

<sup>4</sup> 21 All. 143.

The decisions establish the following positions, *viz.*, (1) that the court has to consider the substance of a plaint and not merely the form of it, and the relief really asked for, (2) that if the real relief desired is one that can be granted by a Revenue Court in a suit mentioned in the Fourth Schedule, a Civil Court should not entertain the suit, and (3) that if a competent Revenue Court has, in deciding a suit, which is within its exclusive jurisdiction, considered and decided a matter the decision of which was necessary to enable it to pass the decree which it did, that matter cannot be re-agitated by a civil suit. We have already discussed the other cases on this point in note 7 to section 59 *ante*.

In Oudh, another rule was recognised, *viz.*, that the Revenue Court could not finally decide a question of proprietary or under-proprietary title arising in a suit within its exclusive jurisdiction.

The question arose mostly in suits to contest notices of ejection and in suits for recovery of possession because of wrongful dispossession as a tenant, where the Revenue Court did not give effect to the plea that the party ejected was not a tenant but had a proprietary or under-proprietary right. As was observed by their Lordships of the Privy Council in *Muhammad Abul Hasan Khan v. Praga*<sup>1</sup> the Rent Act conferred exclusive jurisdiction on Revenue Courts to decide matters relating to tenancy, leaving to Civil Courts the decision of questions relating to proprietary or under-proprietary rights. The Act contained no provisions investing Revenue Courts with powers to deal with the latter. Hence all that the Revenue Courts were concerned with in these types of cases was to see whether *prima facie* the person alleged by the landlord to be a tenant had a status higher than that of a tenant, *i. e.*, was something more than tenant.<sup>2</sup> If the court found him to have a higher status the suit was decreed without finally determining the question of proprietary or under-proprietary title. Whereas if the court did not come to this conclusion, it proceeded to determine whether the person was a tenant on whom the landlord was justified in issuing the notice of ejection or whom the landlord was within his rights to dispossess and its decision thereon was that of a court of exclusive jurisdiction which Civil Courts had no power to reverse in a civil suit.

In *Raghubar v. Ramphal Singh*,<sup>3</sup> two judges observed that ‘It seems to be settled law in Oudh, (1) that, in a suit to contest the validity of a notice of ejection, if the plaintiff pleads that he is not a tenant but has a right in that land which is inconsistent with his being a tenant, the question, whether he has such a right or not, is one which the revenue courts are not empowered to decide finally, but is one of which the Civil Courts can take cognizance; (2) that if the plaintiff admits that he is a tenant but denies that he is one not holding on special terms, the Revenue Courts have exclusive jurisdiction to determine whether he is or

<sup>1</sup> 20 O. C. 8 (P. C.)—15 A. L. J. 113.

<sup>2</sup> *Man Singh v. Muhammad Mumtaz Ali Khan*, B. R. 8 of 1892; *Raghu Nath Kuar v. Court of Wards*, I U. D. 232.

<sup>3</sup> 3 O. C. 365.

is not a tenant holding on special terms; and (3) that, in cases in which the plaintiff has denied that he is a tenant, and has set up a right in the land inconsistent with his being a tenant and the Revenue Court decides that he is not a tenant, but has the *prima facie* title in the land which he sets up, the Civil Courts have no jurisdiction to grant the defendant a declaration that the plaintiff is a tenant not holding on special terms."

In this case the tenant had contested a notice of ejectment on the ground that he was not a tenant at will but held under a *marwat* grant. The rent court decided in his favour. The landlord sued in a Civil Court for a declaration that he was a mere tenant. The suit was held to lie,

But the court also held that where the Revenue Court has decided that the plaintiff is not a tenant, or has decided that the plaintiff is a tenant, it has no power to decide the question whether the plaintiff is or is not a tenant finally, and civil courts can therefore take cognizance of such question.

Now, under sections 286 and 287, as under sections 199 and 200 of the Agra Act of 1901, and sections 271, 272 of the Act of 1926 before, a question of proprietary and under-proprietary rights is not excluded from the cognizance of Revenue Courts, and these rulings will not hold good any longer.

As to Civil Courts' exclusive power to decide questions of proprietary or under-proprietary title arising in Revenue Court proceedings see the cases cited in footnote.<sup>1</sup> A landlord was held entitled to sue for a declaration that the land held by a tenant was not his *sur*, if the notice of ejectment was cancelled on that ground.<sup>2</sup>

As to the Revenue Courts' exclusive power to deal with tenancy matters, see the cases already cited under sections 59, 61 and under this section, *e. g.*, *Badri v. Khurshed Ali Khan*,<sup>3</sup> *Dharam Raj v. Bhondu Khan*,<sup>4</sup> *Bhawani Bluk v. Rup Mahesh*,<sup>5</sup> *Chhab Narain v. Sri Krishna Din*,<sup>6</sup> *Bishnath Saran Singh v. Silla Baksh Singh*,<sup>7</sup> *Sheo Ratan v. Ram Narain*,<sup>8</sup> *Jagan Nath Singh v. Drigbijay Singh*,<sup>9</sup> *Khiali v. Behari Lal*,<sup>10</sup>

<sup>1</sup> *Debi Baksh v. Ram Dhani*, 19 O. C. 58—2 B. and Cr. L. J. 276. But see *Janki Prasad v. Salig Ram*, 2 O. C. 96; *Muhammad Abul Hasan Khan v. Prag*, 20 O. C. 8 (P. C.)—15 A. L. J. 113; *Amrit Lal v. Jang Bahadur Singh*, 14 I. C. 196; *Muhammad Ewas Ali Khan v. Maheshwar Prasad*, 5 I. C. 118—12 O. C. 64; *Sheo Ratan v. Abbas Bandi*, 4 O. C. 175. See note 17 to section 183.

<sup>2</sup> Sel. Ca. No. 51, *Rudra Partab Sahi v. Gur Saran Lal*, Sel. Ca. No. 176.

<sup>3</sup> 20 O. C. 182.

<sup>4</sup> 18 O. C. 84.

<sup>5</sup> 12 O. C. 164.

<sup>6</sup> 3 O. C. 87.

<sup>7</sup> 1924 A. I. R. Oudh 69—5 L. R. Rev. 57.

<sup>8</sup> 66 I. C. 119.

<sup>9</sup> 21 O. C. 210.

<sup>10</sup> III U. D. 327.

*Uma Nath Baksh Singh v. Janki Baksh Singh*,<sup>1</sup> *Awaz Ali Khan v. Qudrat Ali*.<sup>2</sup>

A revenue court decision in an ejectment proceeding that *A* held the land as under-proprietor was not *res judicata* in a subsequent civil suit for a contrary declaration.<sup>3</sup> Now the decision will depend on whether sections 286, 287 apply.

A zamindar's notice of ejectment was cancelled on the ground that the tenant was more than a tenant at will, and a civil suit by the zamindar that the tenant had no proprietary or under-proprietary rights was decreed. This leaves the precise status of the tenant open for reconsideration and is not *res judicata* as to the matter on a subsequent notice of ejectment.<sup>4</sup>

Where a Civil Court had decided that *A* was an under-proprietor, the landlord could not reopen the matter by issuing a notice of ejectment.<sup>5</sup>

Where a plaintiff in a civil suit fails to establish that he is an under-proprietor, the decision does not establish that the tenant has not hereditary non-transferable rights.<sup>6</sup>

Where a proceeding for acquisition of land by a zamindar (under section 30-A Oudh Act) failed on the court finding that the land was under-proprietary, the decision operated as *res judicata* in a subsequent proceeding consequent on the issue of a notice of ejectment.<sup>7</sup>

Where at the time of partition of a mahal a tenant was treated as an occupancy tenant and described as *sakt-ul-milkiat kabzadar*, the proceedings were held not to be *res judicata*.<sup>8</sup>

In this case there was a long series of litigation. *A* who had a zamindari with *sir*, mortgaged it; on foreclosure, it was alleged by *A* that the land was given to him as *khudkasht* of an under-proprietor. A notice of ejectment was issued to him in 1878 in respect of two of the plots of the land. A competent officer held that *A* was not an ordinary tenant, as he may have *kabzadari* rights. In 1886 another notice was issued to *A* in respect of the same two plots, which was cancelled on the ground that *A* was more than an ordinary tenant and the person who had issued the notice had no right to issue it. At a partition in 1907, *A* was treated as an occupancy tenant and *A* was described as *sakt-ul-milkiat kabzadar*, subsequently in 1912 the landlord obtained a Civil Court declaration that *A* had no proprietary or under-proprietary rights. It was held that the proceedings of 1886 were not *res judicata*, but those of 1878 were as to *A* having *kabzadari* or occupancy rights in the two plots then in suit, but not in respect of the other plots.

<sup>1</sup> 29 O. C. 10.

<sup>2</sup> 53 I. C. 921.

<sup>3</sup> *Hasan v. Baldeo*, 100 I. C. 851.

<sup>4</sup> *Siraj Ahmad v. Gulabia*, 1 U. D. 72.

<sup>5</sup> *Raghu Nath Prasad Singh v. Basdeo*, XIII U. D. 63=13 L. R. Rev. 91.

<sup>6</sup> *Kalka Baksh Singh v. Shoo Ratan*, B. R. 18 of 1910.

<sup>7</sup> *Gurdeo Buz Singh v. Qamar Jahan*, XI U. D. 132.

<sup>8</sup> *Gokul v. Shoo Shankar Lal*, 5 L. R. Rev. (O.)73=VI U. D. 90=1924 R. C. 63

11 O. L. J. 395=8 R. D. 146.

If in a suit under Chapter IX for resumption or assessment of rent, the revenue court declares the defendant to be the proprietor,<sup>1</sup> or not to be the proprietor but liable to have his land resumed or rent assessed,<sup>2</sup> a civil suit does not lie to get a declaration to the contrary. The Single Judge decision in *Bachhi Lal v. Muhammad Mujib-ulla*,<sup>3</sup> to the contrary is bad law and has not been followed. The cases of *Hinuman Das v. Chand Mal*,<sup>4</sup> *Ajuahia Prasad v. Sheo Din*,<sup>5</sup> under section 30 of Act XII of 1881, are also bad law now, inasmuch as they held that in such a Civil Suit, the Court can enquire whether the land was held rent-free within the meaning of the section, so as to give jurisdiction to revenue courts. *Zalim Singh v. Ujagar Singh*,<sup>6</sup> was under section 241 (h) of the Land Revenue Act of 1873 and is of very little help.

In fact, the Revenue Court defendant cannot sue to have the Revenue Court decree declared wrong or void, *e. g.*, that a decree for arrears of rent is void on the ground that the proceedings of the Revenue Court were contrary to law,<sup>7</sup> or a decree for profits is null and void,<sup>8</sup> or that a decree for enhancement of rent,<sup>9</sup> or of ejectment, was wrong and to get an injunction against the execution of the same.<sup>10</sup> The vendee of plot entered as *bila tasfu lagan*, dispossessed by the Revenue Court under the Oudh Rent Act, could sue in the Civil Court for possession.<sup>11</sup>

The civil court has jurisdiction to entertain a suit for a declaration that a decree for rent obtained against the plaintiffs as heirs of the deceased from a Revenue Court is not binding on them because under a custom they were not the heirs of the deceased and their guardian acted with gross negligence in not taking up that plea.<sup>12</sup>

No civil suit lies for a declaration that the collector had not power to review his order vacating a decree and for recovery of the decretal amount.

Where the Revenue Court defendant did not raise a plea which he could have done with effect, the question whether he can base a civil suit on the subject-matter of such plea depends on whether he could have brought a suit or made an application of the nature specified in the Fourth Schedule to give effect to it. If he could not have sued or applied in the Revenue Court under the Tenancy Act, his suit, if submitted, will not be barred on the wording of the section, though on the general rule that a Civil Court is not a Court of review or appeal as

<sup>1</sup> *Sturmer v. Chatto Lal*, 9 I. C. 813.

<sup>2</sup> *Baldeo Singh v. Mardan Singh*, 7 A. L. J. 818=6 I. C. 425.

<sup>3</sup> 6 A. L. J. 507.

<sup>4</sup> 6 A. W. N. 23.

<sup>5</sup> 6 All 403=4 A. W. N. 75.

<sup>6</sup> 3 All. 367.

<sup>7</sup> *Uman Shankar v. Bhagwandin*, 7 A. L. J. 1064.

<sup>8</sup> *Chiranjil Lal v. Kheri Singh*, 7 A. L. J. 810.

<sup>9</sup> *Baldeo v. Bhole*, 2 A. W. N. 96.

<sup>10</sup> *Mahip Singh v. Chotu*, 5 All. 245=3 A. W. N. 10; *Inderjit v. Gur Prasad*, 3 A. W. N. 73.

<sup>11</sup> *Seikh Barsuti v. Sarju Prasad*, 1939 A. I. R. Oudh 10=1938 R. D. 855.

<sup>12</sup> *Kale Khan v. Masud Husain*, 1941 B. D. 459, relying on *Siraj Fatima v. Mahmud Ali*, 54 All. 646.

regards Revenue Courts, the Civil Court would hesitate to nullify the Revenue Court decision, specially if the plea could have been dealt with by the Revenue Court as a matter within its jurisdiction.

The fact that the Revenue Court refused to exercise jurisdiction will not confer jurisdiction on Civil Courts.<sup>1</sup>

*Fraud.*—Words let fall by learned judges and some decisions leave an impression on the mind that once some specific allegation of fraud is made in a civil suit to get round a decree or order of a competent revenue court, the civil court becomes seized of the jurisdiction to revise or review the revenue court decree or order. Instances of such expression are to be found in *Rai Krishna Chand v. Mahadeo Singh*.<sup>2</sup>

This is not the right view. What the civil court has to see is whether assuming the existence of the fraud alleged, the revenue court can or could have granted relief though not the identical relief claimed in the civil suit, in respect of the cause of action alleged, and whether the real or substantial object of the suit could have been or can be attained by a suit or proceeding of the nature in Schedule IV. Let us review the cases. In *Rai Krishna Chand v. Mahadeo Singh*,<sup>3</sup> there is an observation which leads to the inference that a civil suit may lie to get round a revenue court decision in an ejectment suit on the ground that it had been the result of a fraud. In *Ram Nandan Singh v. Parbhu Narain Singh*,<sup>4</sup> a single judge held that a civil court was competent to entertain a suit for a declaration that a compromise in an arrears of rent suit (followed presumably by a decree in the revenue court against the civil court plaintiff) in a revenue court had been brought about by fraud of the plaintiff's grandfather who had acted for him in the revenue court. It should be noticed that except perhaps by way of review, the civil court plaintiff could not have obtained any relief in the revenue court, and it is doubtful whether fraud is a ground for review. The decision is not satisfactory. In *Nandan v. Muhammad Ali*,<sup>5</sup> another single judge, in a very short and almost unintelligible judgment, ruled that a civil suit lay to obtain a declaration that a decree for arrears of rent had been the result of a fraud. The marks made above apply. The learned judge based his decision on *Mahadeo Prasad v. Takia Bibi*,<sup>6</sup> which is responsible for the view that a revenue court partition carried through by fraud practised upon outside parties, such as mortgagees, or upon the revenue court itself, may be declared void by a civil court, and interpreted the ruling as laying down a general exception to the well recognised rule that a civil court cannot set aside a revenue court decree. Under the Land Revenue Act only the

<sup>1</sup> *Sunder Lal v. Kifayat Husain Khan*, V U. D. (H. C.) 22—3 L. R. Rev. 134—8 Rev. and Cr. L. J. 126—1922 R. C. 14—8 R. D. 529.

<sup>2</sup> 21 A. W. N. 49.

<sup>3</sup> 21 A. W. N. 49.

<sup>4</sup> 19 I. C 666.

<sup>5</sup> 11 U. D. 722.

<sup>6</sup> 22 A. W. N. 182

Board of Revenue has power of review, and the Act does not provide any method for getting over partitions made. In *Jahandar Begam v. Chinta*,<sup>1</sup> another single judge ruled that a revenue court decree for arrears of rent followed by ejectment under section 59 of Act II of 1901 could be set aside by a civil court decree on the ground that the landholder had fraudulently described in the revenue court suit the plaintiff as an ordinary agricultural tenant to whom section 57 (a) of that Act would be applicable, whereas he was a groveholder to whom that enactment did not apply. This decision requires reconsideration as description of a groveholder as an ordinary agricultural tenant is not fraud, but may be a mistake of law, and it is an established rule that a revenue court decision cannot be challenged in a civil suit because it is founded on a misake of law.<sup>2</sup>

A two judge decision held that if the averments as to fraud amount to an allegation of specific fraud (*e. g.*, that suit was against a person who had been dead or had not been heard of for more than 7 years, that such a person was sued as insane under the guardianship of his wife, and that the summonses had been served fictitiously and clandestinely) the civil court can declare void and invalid the decree of a competent revenue court for arrears of rent and ejectment thereon. No argument seems to have been advanced from the bar that the plaintiff in the civil court could have obtained adequate relief against his ejectment by a suit under section 99 or section 121 of the Act of 1926. In *Kundan Lal v. Parshadi*,<sup>3</sup> A was ejected by a revenue court by an *ex parte* decision in a suit for ejectment, as a non-occupancy tenant. (It may be mentioned that in most of the cases already cited the decrees or orders of ejectment were *ex parte*.) His attempts to get the *ex parte* decision set aside proved infructuous. Then he sued in a civil court alleging that the whole proceedings in the Revenue Court were tainted with fraud of the defendant landholder, inasmuch as he induced the peon to make untrue return of service, whereas no notice had actually been served on him. He prayed for cancellation of the revenue court decree and declaration that the land in dispute was a grove and he the groveholder thereof. The fraud alleged was found not proved, and two judges ruled that the revenue court was competent to determine whether or not A was an agricultural tenant of the land (and consequently not a groveholder), and the decision being of a court of exclusive jurisdiction could not be touched by a civil court. In *Ram Dihal Dube v. Gajraj*,<sup>4</sup> the landholder applied under section 81 of the Act of 1926 (section 169 of this Act) for an order on B, his tenant, to pay the arrears of rent or be

<sup>1</sup> 1929 A. I. R. All. 232=X U. D. (H. C.) 202=10 L. R. Rev. 261=116 I. C. 855=13 R. D. 336.

<sup>2</sup> *Jiwan Singh v. Reoti Singh*, XI U. D. (H. C.) 165=11 L. R. Rev. 121=14 D. 287.

<sup>3</sup> 46 All. 570=22 A. L. J. 465=1924 A. I. R. All. 744=VI U. D. (H. C.) 105=5 L. R. Rev. 159=10 R. and Cr. L. J. 195=79 I. C. 960=1925 R. C. 173=9 R. D. 387.

<sup>4</sup> 1935 A. L. J. 470=1935 A. I. R. All. 499=1935 R. D. 143=XVI U. D. 204.



ejected. Usual notices were issued but were not personally served, though the court, acting on the report of the service peon, declared the service to be good. It passed an *ex parte* order for the arrears, and an order for ejectment in case the arrears were not paid within the time fixed or cause shown by the next date. This order was served on *B*, but he did not appear on the date fixed to pay up or show cause, and an order for ejectment was passed. *B* thereafter sent money orders for the decretal amount but *A* refused to accept them. The third or last notice under section 93 of the Act of 1926 (now section 181) was issued on the application of *A* for delivery of possession and was personally served on *B*. He did not appear and possession was made over to *A*. *B* applied for review of the *ex parte* orders, alleging non-service of notices, false return of service as the result of collusion between *A* and the peon, and explaining the fact of personal service on him by the statement that the peon had misrepresented to him that the notice was in a matter of redemption and that the landholder had exaggerated his claim in the application under section 81 of the Act of 1926, and that he had sent money orders for the decretal amount which had been refused. The revenue courts held that the service of notices had been properly made and the allegation as to the misrepresentation by the peon was untrue, and refused to interfere with the ejectment. *B* then filed a civil suit for a declaration that the revenue court orders were void as obtained by fraud. The particulars of the fraud alleged were the same as in the application for review. The High Court ruled that the real object of *B*'s suit was a declaration that in spite of his ejectment he was a tenant of the land, and possession. This he could get by a suit under section 183 or section 59, and the revenue court would in such a suit determine whether the service of notices was fraudulent or by misrepresentation, and, on the findings, would also determine whether *B* had been ejected otherwise than in accordance with the provisions of the law, and whether he was in law still a tenant.

7. Competency to grant relief.—Under the Act, Revenue Courts can grant relief only in one of the matters mentioned in Schedule IV. Hence the relief claimable on the cause of action alleged in the plaint must be relief which will be granted by award of a relief mentioned in that schedule. For instance, a Revenue Court cannot grant a declaration of title, rectify a lease,<sup>1</sup> etc. A Revenue Court cannot grant a decree for mesne profits. Hence a Civil Court may award it in a decree for declaration of title to a part of a land.<sup>2</sup> The allegations in the plaint and the relief claimed or the practical effect thereof should ordinarily be looked into to ascertain whether a Revenue Court has jurisdiction. Section 288 shows that a landholder may sue a person in a Civil Court alleging or implying that the latter is not his tenant; and if the defendant pleads that he is the plaintiff's tenant, the Court will adopt the procedure of the section. Hence a suit for a declaration that the defendant is in possession as manager for the plaintiff on certain terms but liable to be ejected at will, is properly

<sup>1</sup> *Husain Shah v. Gopal*, 2 All. 428.

<sup>2</sup> *Ganga Sahai v. Bansai*, 17 A. L. J. 993.

brought in a Civil Court.<sup>1</sup> A Civil Court may grant specific performance of a lease,<sup>2</sup> or declare the validity of a covenant in a lease.<sup>3</sup> A suit by a person for a declaration that he is the tenant of a holding will, under section 59 or 60 lie in a Revenue Court. If relief can be granted by the Revenue Court, the fact that it is not identical with the relief which it could have granted, the suit is within its jurisdiction although injunction is also prayed for.<sup>4</sup> But a suit for compensation or injunction against a fixed-rate tenant who does some act inconsistent with the purpose for which the holding was let (in this case building a temple) lies not in the revenue court but in the civil court.<sup>5</sup>

Under Act XII of 1881, a Revenue Court had no jurisdiction to entertain a suit for the removal of trees or buildings planted in contravention of the terms of the lease, or the planting of which was inconsistent with the purposes for which the holding was let.<sup>6</sup> Under the present Act, such a suit lies in a Revenue Court.<sup>7</sup> If a tree is cut from a grove a suit lies in the Civil Court for damages.<sup>8</sup>

A suit to eject a transferee of an exproprietary holding is provided for by section 171, and therefore no civil suit can lie for such a purpose.<sup>9</sup> So a suit for ejectment on the ground of auction sale of a grove.<sup>10</sup>

The revenue Court can decide in a suit for ejectment of a permanent lessee on the plea that the lessor had no authority to grant it whether he had such authority or not, and whether the lease was valid.<sup>11</sup>

Jurisdiction therefore depends more on the nature of the suit than on the relief claimed.<sup>12</sup>

Where a cause of action for a suit entitles the plaintiff to a relief or reliefs only part or some of which can be granted by a Revenue Court and the rest by a Civil Court, the plaintiff has the option to split the relief or reliefs, and sue in a Revenue Court for what it can decree, and in a Civil Court for the rest, but he is not bound to split his reliefs. He may bring a single suit for all he is entitled to on the cause of action, and since a Revenue Court would not be able to grant all that he can claim it would not be in a position to grant relief. Hence section 242 does not oblige the plaintiff to sue in a Revenue Court, in fact he

<sup>1</sup> *Muhammad Abu Jifar v. Wali Muhammad*, 3 All 81.

<sup>2</sup> *Dipchand v. Muh. Khalil*, 47 All 64=23 A. L. J. 505=1925 A. I. R. All. 584=88 I. C. 162=1925 R. C. 290, 331=VI U. D. (H. C.) 479=6 L. R. Rev. 152=11 R. and Cr. L. J. 160, 207=9 R. D. 161. See per Blair, J. in *Kashigir v. Jogindra Nath* 27 All 135; *Laljit v. Umrao*, 5 All. 103.

<sup>3</sup> *Kuar Thakuran v. Ganga Narain Lal*, 10 All 615=8 A. W. N. 237

<sup>4</sup> *Shyam Lal v. Hira Nath*, 1934 A. L. J. 566=1934 A. I. R. All. 685=XV U. D. (H. C.) 130=15 L. R. Rev. 403=18 R. D. 306

<sup>5</sup> *Asharfi Singh v. Rajmat Chondrika Prasad Kunzi*, 1940 A. L. J. 261=1940 R. D. 175 (dissenting from *Kashi Kahar v. Asharfi Singh*, 1938 A. L. J. 720.)

<sup>6</sup> *Prosanno Mai v. Mania*, 6 A. W. N. 248; *Raj Bhadur v. Burmha*, 3 All. 85; *Amritlal v. Balbir*, 6 All. 68; *Gangadhar v. Zuhuria* 8 All. 446.

<sup>7</sup> *Jai Kishan v. Ram Lal*, 18 A. W. N. 135; *Kanhaiya v. Huriyan*, 21 A. W. N. 164

<sup>8</sup> *Sri Narbadeshwar Mahadeoji v. Bishambhar Ram*, 1940 R. D. 24.

<sup>9</sup> *Ramphul Singh v. Ramadhin*, II U. D. 697.

<sup>10</sup> *Sri Kishan Lal v. Bijai Singh*, 1932 A. L. J. 857=XIII U. D. (H. C.) 155

<sup>11</sup> *Raghwa Nandan Madhuri Swami v. Ram Newaz*, 14 L. R. Rev. 591.

<sup>12</sup> *Inayat Hussain v. Muhammad Asfari*, 11 A. L. J. 542.

cannot.<sup>1</sup> For instance, if agricultural and non-agricultural land are let by a single lease at a lump rent, without in any way apportioning the rent on the two kinds of land, a suit for rent in a proper Civil Court is not objectionable on the score of jurisdiction. Even if the lease indicates that so much of the lump rent is for agricultural land and so much for non-agricultural land the plaintiff's right to sue for the lump rent in the proper Civil Court remains untouched.<sup>2</sup>

But in such a case it is within the right of the plaintiff to sue in a Revenue Court for the rent indicated for the agricultural land.<sup>3</sup> The Revenue Court cannot however make a new contract for the parties and apportion the rent between agricultural and non-agricultural lands, so that it may have jurisdiction on so much of the claim as represented the rent of the agricultural land.<sup>4</sup>

What has been said about suits for rent applies equally to all suits where a part only of the relief or reliefs claimed can be granted by a Revenue Court. Part of a plot of land is mortgaged to A and is in his possession and the whole of it is loaned to B who cannot get possession, B has a right to redeem the mortgaged portion by means of a civil suit, and then be entitled to get possession and without being entitled to sue for possession he cannot resort to s. 183. Hence a suit for possession of the whole plot is properly brought in a Civil Court.<sup>5</sup> In this case, the plaint in the Civil Court was originally for redemption of the whole plot, and it was discovered from the evidence that only part of it had been mortgaged. The plaintiff then asked to redeem the part mortgaged and for possession of the part from which he was being wrongfully kept out of possession.

So where there was one lease partly for agricultural purposes and partly for building, and the lessor, without issuing a notice under s. 54 Oudh Rent Act, ejected the lessee on the expiration of the lease, from the whole land and the lessee sued under s. 108 (10) of the same (s. 183 of this Act), in respect of the whole land it was ruled that since relief could be granted only by the Civil Court in respect of the non-agricultural land, it was competent to try the whole suit and the revenue court had no jurisdiction.<sup>6</sup> The Board of revenue observed in a case,<sup>7</sup> "The suit brought by the appellant in the Civil Court related not only to a holding but certain other property. The suit so far as it

<sup>1</sup> *Oosman Khan v. Sheoraj Singh*, 5 N. W. P. (H. C.) 42; *Abdul Aziz v. Mukhdra Uma Badshah*, 1 O. C. sup. 1. See *Moh. Umar v. Nasira*, 1939 R. D. 463.

<sup>2</sup> *Dau Dayal v. Ram Prasad*, 51 All. 949=1936 A. I. R. All. 741=1936 A. L. J. 109=936 R. D. 293=XVII U. D. (H. C.) 155.

<sup>3</sup> *Ram Sri v. Iqbal Bahadur*, 1933 A. L. J. 946=1933 A. I. R. All. 456=XIV U. D. (H. C.) 71=84 L. R. Rev. 334=71 R. D. 435.

<sup>4</sup> *Oosman Khan v. Sheoraj Singh*, 5 N. W. P. (H. C.) 42.

<sup>5</sup> *Sheo Saran Rai v. Jai Mangal*, 1929 A. I. R. All. 616=X U. D. (H. C.) 258=10 L. R. Rev. 246=13 R. D. 673.

<sup>6</sup> *Umrao Bahadur v. Secretary of State*, 1 U. D. 271.

<sup>7</sup> *Bindhya Chal v. Sahdeo Rai*, XV U. D. 322=15 L. R. Rev. 572.

related to the other property had to be brought in the Civil Court. It would obviously be excessive to require that a plaintiff is to file two suits in respect of different kinds of property belonging to the same person when the matter could be settled in one court.

A similar observation was made by the High Court in a case. There the suit was for partition of the plaintiff's moiety of certain property and for a declaration of his right to a moiety share in tenancy land. It was held that the Civil Court was the proper forum for the suit, in spite of the relief sought as to the tenancy land.

Where the suit is for arrears of rent due in respect of lands part of which is governed by the Tenancy Act, and the rest is not, the suit in respect of whole cannot be brought under the Tenancy Act,<sup>1</sup> nor for any portion of it.

This however, it is submitted, will not entitle a plaintiff to bring a suit in a Civil Court in respect of two different causes of action, the relief in which can be granted by a Revenue Court.<sup>2</sup>

8. *Res judicata*.—The question of jurisdiction and *res judicata* should be kept apart.

Section 242 confers exclusive jurisdiction, *i. e.*, it says that Revenue Courts alone have jurisdiction and Civil Courts have no jurisdiction, much less concurrent jurisdiction. A plea of *res judicata* implies that the Court whose decision is set up as *res judicata* has concurrent jurisdiction in the matter with the Court in which such plea is taken. Hence to say in a civil suit that a Revenue Court decision operates as *res judicata* is absurd, unless the case comes within sections 286 to 288 of the Act. What should be and is generally meant to be pleaded is that the decision of the Revenue Court being of a court of exclusive jurisdiction cannot be touched by the Civil Court. We have seen in notes to section 59 *ante*, how good cases have been spoiled and lost by reason of a wrong plea of *res judicata*. See also *Gomti Kuar v. Gudri*<sup>3</sup> and *Mulchand v. Ilifat Husain*.<sup>4</sup>

A decision by a 2nd class Assistant Collector in a rent suit is not *res judicata* in an ejectment or a rent<sup>5</sup> suit before a first class Assistant Collector.<sup>6</sup>

<sup>1</sup> *Oosman Khan v. Sheoraj Singh*, 5 N. W. P. (H. C.) 42.

<sup>2</sup> *Sukhdeo v. Basdeo*, 57 All. 949=1935 A. L. J. 562=1935 A. I. R. All. 594=1935 R. D. 229=XVI U. D. 273.

<sup>3</sup> 25 All. 1938 (cited at p. 321 *supra*).

<sup>4</sup> XI U. D. (H. C.) 119.

<sup>5</sup> *Sri Narain Singh v. Maharaja of Benares*, XIX U. D. 163=1938 R. D. 420.

<sup>6</sup> *Mangal v. Sampat*, VI U. D. 112, 297=1923 R. C. 550=1924 (H. D.) 592=5 L. R. Rev. 349=9 R. D. 206; *Ram Das v. Parmanandgir*, 3 L. R. Rev. 156=7 R. D. 184=8 Rev. and Cr. L. J. 129, and 279=V. U. D. (H. C.) 87; *Sarabjit Mal v. Ram Khelawan*, 66 I. C. 714 (A)=8 R. and Cr. L. J. 201=4 U. P. L. R. 90; *Ram Sahai v. Sardar*, VII U. D. 45=9 L. R. Rev. 145=11 R. D. 114; *Kachera v. Vidya*, 9 L. R. Rev. 264=IX U. D. 89=12 R. D. 527; *Pashupati Pratab Singh v. Shambhu Pratab Singh*, 14 L. R. Rev. 248=XIV U. D. 89; *Surja v. Kalloo Singh*, XVII U. D. 1=1936 R. D. 1; *Kalyan Das v. Sudarshan Lal*, 1936 A. L. J. 1313=1937 A. I. R. All. 20=1936 R. D. 6; *Ram Kumari v. Adit*, 89 I. C. 379.

A finding by a 2nd Class Assistant Collector in rent suit that the defendant is not a tenant is not *res judicata* in a proceeding for removal of his name from the revenue papers.<sup>1</sup>

A court order varying a rent must be of a competent court, which Tahsildar's court is not. Hence such an order is not *res judicata* even after the tenant has suffered decrees to be passed on the basis of it.<sup>2</sup>

Where a question of proprietary title is decided in a suit for rent by an Assistant Collector of the 2nd class, and a suit for ejectment is subsequently brought in the court of an Assistant Collector of the first class, the first decision was held by a single judge to be *res judicata*, inasmuch as in both the suits a reference under ss. 199, 200 of Act II of 1901 as to the question of proprietary title would have been to the Munsiff, the lowest grade of Civil Courts.<sup>3</sup> If this is so then the Board of Revenue decisions cited in the previous note are wrong. A contrary view was taken by another single judge.<sup>4</sup>

The decision under section 199 of the Act 1901 (as to question of proprietary title) of an Assistant Collector second class in a suit for arrears of rent did not bar a suit under section 82 of the Act of 1926 before a first class Assistant Collector.<sup>5</sup>

Where a plaint is rejected under O. 7, r. 11 (b), C. P. C., for non-payment of proper court-fee, there is no bar to a fresh suit on the same cause of action<sup>6</sup>, because the dismissal was not on the merits but on a preliminary point.

A finding in a previous suit that one of the parties thereto was a *shankalapdar* is *res judicata* in a subsequent suit.<sup>7</sup>

A decree of a Settlement Court declaring the nature of a grant made by the Crown and the status of the grantee under Settlement Circular No. 20 of 1866 is not *ultra vires* and operates as *res judicata* in a civil suit.<sup>8</sup>

Previous revenue court decisions as to the status of a tenant and the rate of annual rent are *res judicata*.<sup>9</sup>

<sup>1</sup> *Azharul Husain v. Hasan Ali Khan*, II U. D. 325.

<sup>2</sup> *Raj Kumar Rai v. Ramlakhani*, XIX U. D. 167—1938 R. D. 169.

<sup>3</sup> *Aminuddin v. Abdul Shakur*, 1923 A. I. R. All. 556—XI U. D. (H. C.) 38—10 R. and Cr. L. J. 105—5 L. R. Rev. 26—1923 R. C. 502—73 I. C. 460—8 R. D. 356

<sup>4</sup> *Sunder Lal v. Bhup Singh*, VI U. D. (H. C.) 73—5 L. R. Rev. 105—1924 R. C. 43—10 R. and Cr. L. J. 134—9 R. D. 373; and by another single judge in *Ram Gobind v. Sri Thakurji Mahraj*, 11 A. L. J. 231—19 I. C. 126.

<sup>5</sup> *Sheodarsan Lal v. Balmakund*, 1938 All. 184—1937 A. L. J. 1339—1938 A. I. R. All. 82—1938 R. D. 48—XIX U. D. (H. C.) 15.

<sup>6</sup> *Bhiki Khatik v. Hans Rani*, XIII U. D. 61.

<sup>7</sup> *Raghunandan v. Dhaneshwar*, XIV U. D. 523—14 L. R. Rev. 867.

<sup>8</sup> *Amjad Husain v. Nawab Ali*, XVII U. D. (H. C.) 9, 1936 R. D. 35.

<sup>9</sup> *Bijai Bahadur Singh v. Bhagwan Baksh Singh*, XI U. D. (H. C.) 263.

A decision on a notice of ejectment that the tenant was not an occupancy tenant but an ordinary tenant is binding in a subsequent suit on the successors of the tenant.<sup>1</sup>

Where a notice of ejectment was cancelled on a finding that the plaintiff was a trespasser, a civil suit to eject him as a trespasser was held to lie.<sup>2</sup>

Where on the basis of entries in revenue papers made after contest but in spite of a civil court judgment to the contrary, a suit for profits for 1934 was decreed over ruling defendant's objections, the decision is *res judicata* as to a suit for profits for a subsequent year but not as to the rate of profits.<sup>3</sup>

The Court which tried the first suit must have been competent to do so.<sup>4</sup>

Where the law lays down that rents of holdings of a particular type shall be determined by a settlement officer, and a court though finding that the holding is of that particular type proceeds to say that the rent shall be determined in some other way, it is beyond its jurisdiction and not *res judicata*.<sup>5</sup>

In a suit under section 159 of Act II of 1901, (new s. 224) the Tahsildar, instead of confining himself to the question whether the land revenue for which the suit was brought was due from the defendant to the plaintiff, held that the land was a permanent *muafi*. This was outside his powers, and hence the decision is not *res judicata* in a subsequent litigation.<sup>6</sup>

Where a civil suit by A claiming proprietary possession of a holding has been dismissed his suit to eject the defendant as an ex-proprietary tenant who has sublet contrary to law is barred.<sup>7</sup>

Where the Civil Court has decided about the privity or otherwise of a mortgage held by a party to a suit, the revenue court cannot go into that question.<sup>8</sup>

A civil court is not competent to decide whether or not A is a tenant with a right of occupancy. Hence its decision that A has only a life interest as a tenant under a special agreement did not bar a suit by A's son for a determination of his right of occupancy under section 108, 6)

<sup>1</sup> *Wajid Khan v. Raghu Indra Pratab Sahu*, XVII U. D. 195.

<sup>2</sup> *Khaki Singh v. Bishu Nath Lal*, VI U. D. (H. C.) 370—6 L. R. Rev. (O.) 51—9 R. D. 563.

<sup>3</sup> *Shiva Bans v. Rajman*, 1938 A. L. J. (B. R.) 84—1938 R. D. 441.

<sup>4</sup> *Radhe Lal v. Chitranji Lal*, 6 L. R. Rev. 30—1924 R. C. 47—VI U. D. 356—11 R. and Cr. L. J. 66—8 R. D. 261.

<sup>5</sup> *Muh. Ali Muh. Khan v. Bisheshar Singh*, VII U. D. 229—7 L. R. Rev. 384—1926 R. C. 497—10 R. D. 287.

<sup>6</sup> *Jwala Prasad v. Raj Rani*, XII U. D. 180—12 L. R. Rev. 321—15 R. D. 616.

<sup>7</sup> *Nannu Prasad v. Ram Chandra Singh*, XVIII U. D. 374—1937 R. D. 591.

<sup>8</sup> *Harish Chandra Singh v. Nanak Buz Singh*, XV U. D. 254—18 R. D. 330.

of the Oudh Act or for recovery of possession of his holding as a tenant with right of occupancy from which he had been dispossessed under a Civil Court decree as a trespasser,<sup>1</sup> (specially when the only point in dispute in the civil suit in which the decision as to *A* being a life tenant was given was whether *A* had a transferable right, the suit being to cancel an illegal transfer).

Though civil courts may decide a question of proprietary or under-proprietary rights involved in a civil suit, they cannot review a revenue court decision on the point, and it was held to be doubtful whether a declaration that a Revenue Court order was *ultra vires* could be granted apart from any question of proprietary right.<sup>2</sup>

A Civil Court has no jurisdiction to decide whether *A* is the occupancy tenant of a holding; and the Revenue Court may in a proceeding under the Land Revenue Act ignore it, and come to the conclusion that *A* is a trespasser. This decision will be *res judicata* in a subsequent ejectment suit.<sup>3</sup>

Where the plaintiff in a civil suit fails to establish that he is an under-proprietor, the Civil Court has no jurisdiction to decide as to the class of tenancy he holds.<sup>4</sup>

A Civil Court decision as to the status of *A* to be a tenant does not operate as *res judicata* in a Revenue Court suit by the landholder for a declaration that *A* is not his tenant,<sup>5</sup> specially if the landholder was no party to the Civil Court litigation.<sup>6</sup>

A Civil Court decision that an unregistered lease granted by a *mahant* is not binding on his successor is *res judicata* in the Revenue Court in the successor's suit to eject the lessee, but not a decision that such leases were permanent alienations.<sup>7</sup>

A Civil Court decision in a suit for contribution does not operate as *res judicata* in a suit under s. 49 as the Civil Court was not competent to try the latter suit, and the issue in a contribution suit does not directly raise the question of the extent of the shares, and the question in issue in a suit under s. 49 is not directly and substantially in issue in a contribution suit.<sup>8</sup>

*A* was ejected as a trespasser by the Revenue Court. On his resumption of possession, he was sued in a Civil Court for possession.

<sup>1</sup> *Jagat Rani v. Gokul Singh*, II U. D. 56.

<sup>2</sup> *Uma Nath Baksh Singh v. Janki Baksh Singh*, VI U. D. (H. C.) 361=6 L. R. Rev. (O.) 49=1925 R. C. 261=2J O. C. 10=2 O. W. N. 199=9 R. D. 307=86 I. C. 864.

<sup>3</sup> *Khaderu v. Sumatra*, XV U. D. 339

<sup>4</sup> *Baldeo Singh v. Bishambher Nath*, B. R. 3 of 1903.

<sup>5</sup> *Sunder Koeri v. Mangat Rai*, XVII U. D. 338=1936 R. D. 457.

<sup>6</sup> *Raghunandan v. Gur Charan Prasad*, 14 L. R. Rev. 702=XIV U. D. 372.

<sup>7</sup> *Muth Sri Gorakh Nath Ji v. Swami Nath Lal*, XIX U. D. 212=1938 R. D. 623.

<sup>8</sup> *Matai Shukla v. Jag Narain*, XII U. D. 352=13 L. R. Rev. 179.

He pleaded tenancy, and the Civil Court referred an issue under s. 273 of the Act of 1926 as to A's status. It was held that A was a tenant. This finding, though wrong and contrary to the previous decision of the Revenue Court, was *res judicata*<sup>1</sup> in a subsequent suit under s. 44 of the Act of 1926.

A decision under s. 49 between the various branches of a family that a holding belongs to one of the branches only and not to the others is binding as between them. If the landholder was not a party he is not bound; but if he is a party to a subsequent suit which is decided on the basis of the previous decision against him he ought to appeal. If he does not he becomes bound, as the tenants cannot appeal on his behalf.<sup>2</sup>

A decision under s. 49 between two branches of a family that certain holdings were the ancestral holdings of the parties is *res judicata* in a subsequent suit by the defeated party to the effect that they had been acquired exclusively by his branch of the family although he impleads the zamindar only as a dummy to present his view.<sup>3</sup>

Where in parallel proceedings in Revenue Courts under s. 49 and s. 61, the latter is decided first, and then the other on the basis of this decision, an appeal in the suit under s. 61 is not barred because no appeal has been filed in the suit under s. 49.<sup>4</sup>

Two proceedings, one for correction of *jamabandi*, to which alone the landholder was a party, and the other under section 49 were brought among the members of a family in respect of a holding, and an issue common to both was decided in each. There was an appeal in the correction case but none in the other. The decision in the latter is *res judicata* in the appeal in the correction case as between the members of the family but not as against the landholder.<sup>5</sup>

A Civil Court decision that the share of two tenants in a holding was half and half does not operate as *res judicata* in a proceeding under s. 49 but the Revenue Court may follow that decision and no party can complain, as the ascertainment of shares is necessary before a partition proceeding can proceed.<sup>6</sup>

A decision by a Court that it has no jurisdiction is not *res judicata*.<sup>7</sup>

A Civil Court is not bound by a decision on the question of jurisdiction of a Revenue Court which is contrary to the rulings of Civil Court of highest jurisdiction, although it was *inter partes*, and

<sup>1</sup> *Shyam Narain v. Prem Narain*, XV U. D. 305.

<sup>2</sup> *Shiva Nath v. Mula*, XII U. D. 304; *Ram Sukh v. Dulari*, 13 L. R. Rev. 15.

<sup>3</sup> *Jagdeo v. Sadho*, 14 L. R. Rev. 141=XIV U. D. 438.

<sup>4</sup> *Zaifullah Khan v. Ahsanullah*, XV U. D. 37=15 L. R. Rev. 6.

<sup>5</sup> *Ram Raj Mal v. Tirlokmal*, XIII U. D. 100.

<sup>6</sup> *Jivan Singh v. Jurawan Singh*, XIII U. D. 105.

<sup>7</sup> *Amir Singh v. Muh. Zahiruddin*, 12 L. R. Rev. 28=XII U. D. (H. C.) 60=15 R. D. 160.



a party may raise the question of jurisdiction of the Revenue Court in the Civil Court, although the Revenue Court of final appeal ruled that the suit was not cognisable by the Revenue Court.<sup>1</sup>

In this case the Board of Revenue had decided that a suit to eject a tenant of grazing land did not lie in a Revenue Court. On a subsequent suit in the Civil Court for eviction of the defendant, the Civil Court was not bound to follow the decision. It may also be mentioned that a Revenue Court is not bound by a decision of the Civil Court which it considers to be beyond the jurisdiction of Civil Courts, or which is against the decisions of the Board of Revenue.

An order by an Assistant Record Officer declaring a tenant to be occupancy in the course of revision of records is not *res judicata* as it is passed without jurisdiction and is a summary order.<sup>2</sup>

In a former suit it was held that *A* was a statutory tenant and not a sub-tenant. This is not *res judicata* as to whether *A* was the heir of a statutory tenant.<sup>3</sup>

A vague or indefinite finding, *e. g.*, that the status of a tenant is something more than that of an ordinary tenant, is not *res judicata* as to the exact status of the tenant.<sup>4</sup>

In Oudh it was held that a finding in a suit to contest a notice of ejectment that *A* was the tenant of *B*, ignoring *A*'s plea of proprietorship of the land, *A* could sue in a Civil Court that he was the owner. This will hardly hold good now.<sup>5</sup>

Where the Court decides an issue but expressly says that the decision will not be *res judicata*, the rule of *res judicata* does not bar a subsequent trial of the same issue, but the principles of the law of estoppel may apply.<sup>6</sup>

Pleas which might and ought to have been taken in a previous suit cannot be agitated in or by a subsequent suit.<sup>7</sup> The matter of such pleas

<sup>1</sup> *Nathan v. Harbans Singh*, 1930 A. L. J. 352—1930 A. I. R. All. 254—XI U. D. (H. C.) 103—11 L. R. Rev. 42—14 R. D. 115.

<sup>2</sup> *Mula v. Secretary of States*, XVI U. D. 477.

<sup>3</sup> *Sukhdeo v. Rahima*, XII U. D. 116.

<sup>4</sup> *Udai Bhan Singh v. Gokul Prasad*, XVI U. D. 596 ; *Jafri v. Jaipal*, VI U. D. 21 ; *Baldeo Singh v. Kandhaya Lal*, XIV U. D. 461 ; *Dhaurwa Estate v. Chuttan Singh*, B. R. 17 of 1910 ; *Mukhtar-ul Huda v. Bakhtawar Khan*, B. R. 8 of 1918 ; *Kesho Ram v. Abu Jufar*, II U. D. 225.

<sup>5</sup> *Julpa Din v. Kalka Baksh Singh*, 21 O. C. 324—49 I. C. 61—1 U. P. L. B. (J. C.) 59.

<sup>6</sup> *Akbar Khan v. Haider*, XIV U. D. 92.

<sup>7</sup> *Mohan v. Bhanwar*, VI U. D. 84—10 Rev. and Cr. L. J. 137—1924 R. O. 125—9 R. D. 588—5 L. R. Rev. 119 ; *Chatur v. Ram Chunder*, XVIII U. D. 214 ; *Habib Ahmad v. Bhagnant*, XX U. D. 183, see also *Latif un-nissa v. Ganga Ram*, 6 L. R. Rev. 128—1925 R. O. 126—8 B. D. 224, and *Jugroop Singh v. Har Narain Misra*, 10 L. R. Rev. 326.

must be a matter connected with the cause of action and in issue between the parties at the time. Hence a suit for ejectment on the ground of illegal transfer does not bar a suit for ejectment as a non-occupancy tenant.<sup>1</sup> An essential issue decided is *res judicata*;<sup>2</sup> but not if the issue was not tried.<sup>3</sup>

Where in a previous ejectment suit, a defence plea is rejected and the suit decreed, but on execution being refused, a fresh suit is brought, the plea cannot be urged again.<sup>4</sup>

Where in a suit it has been decided that certain land in the occupation of a statutory tenant, who had purchased a small share in the zamindari, is his *khudkasht*, the matter cannot be opened again.<sup>5</sup>

A decision of a most summary kind made without the parties having been summoned or given opportunity to present their cases is not *res judicata*. But the mere fact that a formal issue on a point was not framed will not take away the effect of *res judicata* if the issue was perfectly clear, and the matter has, without any issue being framed, been exhaustively enquired into.<sup>6</sup>

A decision in a previous suit under s. 183 by A claiming to be the heir of the deceased tenant as being a co-tenant with him, that A was only the heir of the statutory tenant (deceased tenant) was binding on A in a suit by the zamindar to eject him as such heir on the expiration of 5 years.<sup>7</sup>

Where at the sub-settlement a claim to *kabzadari dawami* was rejected for want of proof, a claim to under-proprietary rights is barred as it could have been made at that time.<sup>8</sup>

A decision in a previous ejectment suit under s. 62 of the Oudh Act as to under-proprietary rights operates as *res judicata* in a subsequent suit for recovery of possession in the Revenue Court until there was a final adjudication of the question in a Civil Court.<sup>9</sup>

<sup>1</sup> *Mackinnon v. Sampat Kunwar*, XIX U. D. 4—1938 R. D. 4.

<sup>2</sup> *Coombs v. Sunder Singh*, 11 Rev. and Cr. L. J. 21, *e. g.*, that a suit cannot be maintained for ejectment as some of the co-sharers had not joined in it, *Tulwa v. Rafiuddin*, 10 L. R. Rev. 62—X U. D. 53; *Gangadhar Rai v. Jai Mangal Rai*, X U. D. 163—10 L. R. Rev. 317; *Ali Musa Raza v. Jukhi Singh*, IV U. D. 240—11 Rev. and Cr. L. J. 4—1924 R. C. 419—8 R. D. 214—5 L. R. Rev. 300; *Raghu Nath Prasad v. Basdeo*, XIII U. D. 63.

<sup>3</sup> *Sripat Suhai v. Ram Autar*, 10 R. and Cr. L. J. 79—VI U. D. 365—5 L. R. Rev. 8—1923 R. C. 544—8 R. D. 63—6 L. R. Rev. 226—9 R. D. 57.

<sup>4</sup> *Abdul Rushid v. Lakhi Singh*, IX U. D. 125—9 L. R. Rev. 234—12 R. D. 896.

<sup>5</sup> *Jai Jai Ram v. Ram Samujh*, XV U. D. 530—16 L. R. Rev. 108.

<sup>6</sup> *Tulsi Ram v. Raghunandan*, XII U. D. 271—15 R. D. 634.

<sup>7</sup> *Tulsi Tewari v. Jumuna*, XVIII U. D. 210.

<sup>8</sup> *Court of Wards v. Sher Bahadur*, 5 L. R. Rev. (O.) 137—VI U. D. 222.

<sup>9</sup> *Mihesh v. Rudra Paritab Singh*, I U. D. 34; *Rameshwar Buz Singh v. Dattu Singh*, IV U. D. 37.

A decision between *A*, *B* and *C* that *A* held a plot of land as *khudkasht* in 1333 and 1334 F. is *res judicata* between *A* and *B* in a partition proceeding, and *B* cannot be allowed to show that *A* was not even a proprietor in those years.<sup>1</sup>

Where a suit for ejectment under s. 34 read with S. 58 of Act II of 1901 was deposited by order under s. 276 of the Act of 1926 and no order dismissing it was passed after 7th September 1926, a fresh suit under s. 44 of the Act of 1926 was not barred.<sup>2</sup>

The decision in a suit withdrawn in appeal with liberty to bring a fresh suit does not operate as *res judicata*.<sup>3</sup>

*Res judicata* applies if the issues in the two suits are substantially though not identically the same.<sup>4</sup> In a suit under s. 183 it is not necessary to decide the status of a defendant claiming under the landholder defendant. Hence such a decision is not *res judicata* between these defendants.<sup>5</sup>

When a party accepts a decision about the nature of the tenancy in dispute with respect to certain plots and appeals against the decision in respect of other plots, and the entries in the revenue papers are the same in respect of all the plots, the decision not appealed against would act as a bar to the appeal.<sup>6</sup>

A decision under s. 39, Land Revenue Act, on the basis of possession is not *res judicata* in a subsequent suit for declaration<sup>7</sup> or ejectment.<sup>8</sup>

If the decision of an issue was not necessary for the disposal of former suit, it does not operate as *res judicata* in the subsequent suit.<sup>9</sup>

Where an unauthorised person puts up some constructions and a jar mill on a plot of land, the dismissal of a suit for the removal of constructions and possession of the land does not bar a fresh suit for the removal of the sugar mill and possession.<sup>10</sup>

Where the mortgagee of some *muafi* land in a village of which he had subsequently become the proprietor started an unsuccessful proceeding for the correction of the *jamabandi* by having his name entered

<sup>1</sup> *Dudh Nath v. Kamta Singh*, 14 L. R. Rev. 11=XIV U. D. 9.

<sup>2</sup> *Mahendra Nath v. Dasia*, X U. D. 158=10 L. R. Rev. 319=13 R. D. 773.

<sup>3</sup> *Ram Dayal v. Ram Chandra*, XII U. D. 273=15 R. D. 715.

<sup>4</sup> *Raghu v. Pathala Oudh*, XV U. D. 302=15 L. R. Rev. 537.

<sup>5</sup> *Kayastha Pathala v. Mewa Lal*, XX U. D. 253=1939 R. D. 302.

<sup>6</sup> *Puran Lal v. Balbhaddar Prasad*, XX U. D. 27=1938 R. D. 883, relying on *Hanuman v. Muh. Ali Muhammad Khan*, 3 R. D. 110=II U. D. 208

<sup>7</sup> *Jawahar v. Behari*, XVIII U. D. 83=1937 R. D. 82

<sup>8</sup> *Balmakund Lal v. Sahna*, XV U. D. 332.

<sup>9</sup> *Janki Kunwar v. Raghu Nath Prasad*, III U. D. 179=4 R. D. 30.

<sup>10</sup> *Bandan v. Bindra*, 1925 A. I. R. All. 790=1935 A. L. J. 948=XVI U. D. 488.

as mortgagee of the *muafi* land, because the mortgage entry in his favour had been expunged by an order passed in a proceeding between the then proprietor and the *muafi*-holder, to which he was not a party, the holder being recorded by consent as tenant, it was held in a suit by him to contest a notice of ejectment issued by the *muafi*-holder (now tenant), that the decision was not *res judicata* as it did not proceed on the ground that the mortgage had not been executed, but on the ground that there was not excuse for entering the mortgage in the patwari papers.<sup>1</sup>

An *obiter* or a finding not necessary for the decision of the case is not *res judicata*.<sup>2</sup>

Where in a suit to contest a notice of ejectment, a special agreement, which may be interpreted to be either for life or in permanency, is set up, either interpretation cancels the notice. Hence a finding that it was a permanent lease is not *res judicata*.<sup>3</sup> *Secus*, if there was no such dubiety.<sup>4</sup>

A finding on a mixed question of law and of fact is *res judicata*.<sup>5</sup>

Where a common issue arises in several suits between the parties, and is decided, an appeal from the decree in one only of the cases cannot be maintained.<sup>6</sup>

Where an appeal is filed in one out of two suits raising the same issues, it cannot be heard.<sup>7</sup>

Two suits between the parties were pending before an Assistant Collector, one under s. 175 and the other under the Land Revenue Act. That officer noted that the decision under s. 175 will govern the other case, in which he framed no issues and recorded no evidence. His decision under s. 175 was appealed from but not the one under the Land Revenue Act. The hearing of the appeal is not barred on account of this.<sup>8</sup>

<sup>1</sup> *Raghu Nandan v. Pattoo Lal*, XII U. D. 275

<sup>2</sup> *Dil Ram v. Sheo Govind*, 14 L. R. Rev. 457, so a finding on an incidental and collateral issue, *Sukdeo v. Nohar*, 14 L. R. Rev. 496—XIV U. D. 264.

<sup>3</sup> *Muhammad Nawab Ali Khan v. Mathura*, B. R. 4 of 1905.

<sup>4</sup> *Ram Das v. Jangi Singh*, 4 L. R. Rev. 281—V U. D. 542—1923 R. C. 283—9 and Cr. L. J. 297—7 R. D. 333; *Kausilla v. Bajrang*, V U. D. 374.

<sup>5</sup> *Sheo Govind v. Khatun*, VI U. D. 463—1925 R. C. 465.

<sup>6</sup> *Ghasidin v. Ajit Singh*, 5 L. R. Rev. 124—VI U. D. 98—1924 R. C. 105—9 R. D. 512; *Sheopal Singh v. Ram Dayal Singh*, XI U. D. 87—11 L. R. Rev. 129—14 R. D. 324; *Sia Ram v. Pirthi*, XV U. D. 114—15 L. R. Rev. 339; *Purni v. Shitabo*, 14 L. R. Rev. 550—XIV U. D. 291; *Ram Krishun v. Lallan Dube*, 14 L. R. Rev. 879—XIV U. D. 533. In *Raja Ram v. Raja Rai*, X U. D. 192—13 R. D. 515, the fact of the two suits relating to different plots was held to bar the application of the rule of *res judicata*.

<sup>7</sup> *Ayub Ali v. Shanti Devi*, XX U. D. 151—1939 R. D. 60.

<sup>8</sup> *Ram Rekha v. Chhakauri*, XIII U. D. 182—14 L. R. Rev. 41.

A matter is *res judicata* only as between the parties to it and not as against one not a party.<sup>1</sup>

A decision between *A's thekadar* and a tenant as to the rate of rent payable for a holding does not bind *A*.<sup>2</sup>

A decision in favour of a person that he held under a special agreement and cannot be ejected by notice is not binding in favour of his widow who had succeeded him.<sup>3</sup>

Where several suits for ejectment are brought each against a distinct defendant, and decreed, failure of some of the defendants to appeal from the decrees against them does not affect the appeals of the others.<sup>4</sup>

In a joint Hindu family, a decision of a competent court against the father operates as *res judicata* in a subsequent suit by the sons against the successful party in the previous suit and involving the same issues.<sup>5</sup>

A decision under section 180 ordering the ejectment of *A* is binding on his nephew *B* in a suit for declaration of tenancy, when *B* admits that only recently he was on good terms with *A*, and both cultivated the fields together, as *B* cannot be said to have been ignorant of the suit under section 180 against *A*. The basis of the suit was that *B* was the real tenant of the land over which *A's* name had been wrongly entered.<sup>6</sup>

When different people are interested in the decision of an issue, the decision is binding on others who are merely watching the result of the litigation.<sup>7</sup>

A decision against a lamhardar acting in a representative capacity is binding on the co-sharers.<sup>8</sup>

Where *A*, impleaded as a party in the trial court and successful there, is not made a party in the Commissioner's court, the trial court decision in his favour stands; and the Board of Revenue held that that decision does not become open to challenge by impleading *A* in the second appeal.<sup>9</sup>

If the previous suit (under section 180) was brought on behalf of a minor by a person who was not his guardian, dismissal for default

<sup>1</sup> *Karamat Ali v. Muh. Ibrahim*, 1923 R. C. 74=V U. D. 504=4 L. R. Rev. 311=7 R. D. 321; *Hargu Lal v. Munshi*, VI U. D. 274; *Tulwa v. Rafiuddin*, 10 L. R. Rev. 62=X U. D. 52=13 R. D. 169; *Shiva Nath v. Maula*, 12 L. R. Rev. 419=XII U. D. 304=15 R. D. 375.

<sup>2</sup> *Sri Narain Singh v. Maharaja of Benares*, XIX U. D. 163=1938 R. D. 420.

<sup>3</sup> *Muh. Nawab Ali Khan v. Jag Desi*, I U. D. 213.

<sup>4</sup> *Shub Charan v. Suraj Prasad*, XVII U. D. 184.

<sup>5</sup> *Jokhan Lal v. Jwala Prasad*, 14 L. R. Rev. 181=XIV U. D. 432.

<sup>6</sup> *Harak Chand v. Sumer*, XVII U. D. 89=1936 R. D. 119.

<sup>7</sup> *Kandhoya Lal v. Lalta Prasad*, XIX U. D. 205=1938 R. D. 615.

<sup>8</sup> *Jai Jai Ram v. Ram Samujh*, XV U. D. 530.

<sup>9</sup> *Tilakdhari Singh v. Goga*, XI U. D. 105=14 R. D. 430.

thereof does not debar the minor on attaining majority from suing under the same section.<sup>1</sup>

The rule of *res judicata* does not apply to a subsequent suit which is not against the same set of defendants as in the previous suit, and which is with respect to a different subject-matter and is based on a different cause of action, *Raghu Nath Kunwari v. Loohan*.<sup>2</sup>

Suits *A v. C* and *B v. C* being tried together and on the same evidence with consent, a finding in *A v. C* is binding on the parties in *B v. C*.<sup>3</sup>

There is *res judicata* as between co-defendants if some issue between them was tried,<sup>4</sup> and the decision of this issue was necessary to give relief to the plaintiff in the suit.<sup>5</sup>

A finding in a suit between the mortgagee of land and its tenant that the land is not *sir* and the tenant had acquired occupancy rights is not binding in a suit for ejectment brought by the mortgagor to eject the tenant.<sup>6</sup>

A finding in a suit that certain land is neither agricultural land nor a grove is not *res judicata* in a subsequent suit in which the question is whether a party has the rights of a grove-holder in a subsequent year.<sup>7</sup>

Where *A* is litigating under the same title as *B* did in a previous suit, though not claiming through or under *B*, and the interests of *A* and *B* are identical and *A* does not put forward any claims in advance of or different from those made by *B*, *A* is bound by the result of the previous litigation.<sup>8</sup>

A finding in a suit for ejectment, while Act II of 1901 was in force, that the defendant who had planted guavas was grove-holder, was not *res judicata* in a subsequent suit under Act III of 1926, as now a guava planter was not a grove-holder, and the Act gave a new cause of action.<sup>9</sup> This decision would be open to objection but for the fact that the Board left it open to the plaintiff to show that the character of the land had changed since the date of the prior

<sup>1</sup> *Ahmad Ali v. Hamid Khan*, XII U. D. 111=15 R. D. 3.

<sup>2</sup> 9 L. R. Rev. 335=IX U. D. 162=12 R. D. 785.

<sup>3</sup> *Mumtas-un-nissa v. Khaliluddin*, VII U. D. 173, 487=7 L. R. Rev. 363.

<sup>4</sup> *Jeobodh v. Bshari*, X U. D. 227.

<sup>5</sup> *Kamta v. Phagu*, XX U. D. 158=1939 R. D. 82.

<sup>6</sup> *Parmanand v. Suraj*, VIII U. D. 16=8 L. R. Rev. 40=1926 R. C. 600=11 R. D. 62; *Ram Sahai v. Babu*, VI U. D. 320=5 L. R. Rev. 854=1924 R. C. 549=9 R. D. 362.

<sup>7</sup> *Shri Dhar v. Udaibir Singh*, 1929 A. I. R. All. 17=9 L. R. Rev. 289=IX U. D. (H. C.) 214=115 I. C. 454=12 R. D. 703.

<sup>8</sup> *Hira Lal v. Ram Sunder*=XV U. D. 219=15 L. R. Rev. 362.

<sup>9</sup> *Abdul Hafiz v. Mani Lal*, 13 L. R. Rev. 315=XIII U. D. 162=15 R. D. 555; *Mahesh Singh v. Moola*, 1938 A. L. J. (B. R.) 86=XIX U. D. 227=1938 R. D. 651.

decision. The decision would be different now as a guava planter may be a grove-holder.

A decision under Act II of 1901 as to the authority of a lambardar to collect rents was not *res judicata* in a case brought for arrears of rent under section 132 of the Act of 1926 since section 265 of that Act took away his right in respect of pattis in which he had no share.<sup>1</sup>

An *ex parte* order is, subject to certain limitations, *res judicata*.<sup>2</sup>

An *ex parte* decision is not *res judicata*,<sup>3</sup> specially as to interest, when it does not appear from the proceedings whether it had been claimed under some rule of law or as damages,<sup>4</sup> or as to the rate of rent.<sup>5</sup>

Where the decision in an ejectment suit is that the defendant is holding under a lease the term of which has not expired, an observation to the effect that he had not acquired occupancy rights is *obiter* and not *res judicata*.<sup>6</sup>

A lambardar is under the Act entitled to eject tenants and occupiers of land. If he brought such a suit and withdrew it, the whole body of co-sharers cannot sue again and eject the same person.<sup>7</sup>

Where a settlement court decision has not been acted upon, and the old entries have continued for a long period in spite of such decision, the latter cannot prevail over the entries.<sup>8</sup>

The failure of a lambardar to execute a decree for the ejectment of a trespasser did not bar a fresh suit for the ejectment of the trespasser by a new lambardar.<sup>9</sup> This will not be good law in view of section 180.

How far is a decision of a Revenue Court or of a Court under the Act *res judicata* in a subsequent civil suit? The word *civil* is used advisedly, because as to its being *res judicata* in a subsequent revenue suit, there can be no question. There seems no doubt whatever that decisions under section 286 are *res judicata*, *vide* the notes to that section. There remain two classes of cases, *viz.*, those in which an appeal lies to the

<sup>1</sup> *Sander Lal v. Subedar Singh*, 54 All. 777—1932 A. L. J. 507—1932 A. L. R. All. 416—16 R. D. 403.

<sup>2</sup> *Hardwar v. Chhabraji*, XVI U. D. 300.

<sup>3</sup> *Abdul Hamid v. Lakhpat Rai*, 1941 R. D. 321; *Sripat Sahai v. Ram Autar*, 10 Rev. and Cr. L. J. 79; *Jagat Narain v. Suraj Pal*, 6 L. R. Rev. 229—VI U. D. 467—1925 R. C. 473, *Contra*, *Basant Kumari v. Umrao Singh*—VIII U. D. 38; *Karamat Ali v. Ganesh Lal*, 1927 R. C. 113—VIII U. D. (H. C.) 123. In the second and third cases no evidence was taken. The test is whether the court decided the issue expressly or impliedly in decreeing *ex parte*.

<sup>4</sup> *Maharaj Singh v. Suryapal*, IX U. D. (H. C.) 276—9 L. R. Rev. 306—113 I. C. 758—12 R. D. 678.

<sup>5</sup> *Bindhya Chal v. Jai Bahadur*, 9 L. R. Rev. 345—IX U. D. 166.

<sup>6</sup> *Sripat Sahai v. Ram Autar*, 10 Rev. and Cr. L. J. 79.

<sup>7</sup> *Ameer Singh v. Bibi*, XIII U. D. 175.

<sup>8</sup> *Faujdar Singh v. Baljit Singh*, 12 L. R. Rev. 437.

<sup>9</sup> *Pitambar Das v. Ichri Prasad*, XVI U. D. 542.

Civil Court and those in which an appeal does not lie at all or lies to a Revenue Court.

A Revenue Court decision, whether or not an appeal lies to a Civil Court, cannot be set up as *res judicata* in a Civil Court except in cases under section 286, for the Revenue Court would not have been competent to try the subsequent civil suit; but as we have seen, a Civil Court cannot by its decree reverse a decision of a Revenue Court on a matter which was within its exclusive jurisdiction, although the Revenue Court decided a question which should ordinarily fall within the cognizance of a Civil Court.

In a suit for arrears of rent against *A* and *B* it was decided, in an issue raised between *A* and *B*, that *A* was the tenant up to 1326, and *B* was the tenant for 1327, and a decree was passed against *A* and *B* accordingly. *A* now sued *B* in a Civil Court for the value of the sugarcane crop standing on the land in 1327. It was held that the Revenue Court did not decide in the previous suit as to who had sown the crop as it was not in issue, and therefore its decision was not *res judicata* as to the ownership of the crop.<sup>1</sup>

Where a suit within the exclusive jurisdiction of a Revenue Court was decided, a civil suit does not lie with the object of having it nullified.<sup>2</sup>

A Civil Court cannot declare that the defendant does not hold under a perpetual lease, as held in a suit to contest a notice of ejectment, but is a tenant-at-will and liable to ejectment,<sup>3</sup> or that the lease under which a tenant holds is a forgery or unauthorised, the matter having been declared to the contrary in a Revenue Court,<sup>4</sup> or declare a lease cancelled for breach of its conditions and the lessee liable to ejectment;<sup>5</sup>

or that a lease has expired and the tenant is a tenant by sufferance and liable to ejectment;<sup>6</sup>

or that a tenant is a tenant at will and not an occupancy tenant as entered at the settlement;<sup>7</sup>

or that the person in possession is a mere *thekadar*;<sup>8</sup>

<sup>1</sup> *Tota v Jaggu*, 1924 A. I. R. All. 163—21 A. L. J. 476—10 Rev. and Cr. L. J. 99—5 L. R. Rev. 47—1923 R. C. 342—VI U. D (H. C.) 53—8 R. D. 244.

<sup>2</sup> *Rustam Singh v. Ahmad-un-nissa*, XVIII U. D. (H. C.) 1—1937 R. D. 44; *Jageshar Singh v. Rameshar Bakesh Singh*, 16 R. D. 472—XIII U. D. (H. C.) 109—9 O. W. N. 610; *Har Nath Singh v. Sri Ram*, 6 O. W. N. 1204; *Bipat v. Ram Bakesh Singh*, 1 U. P. L. R. (J. C.) 7.

<sup>3</sup> *Dharamraj v. Bahadur Khan*, 8 O. C. 84.

<sup>4</sup> *Badri v. Khurshed Ali Khan*, 20 O. C. 182.

<sup>5</sup> *Lal Jagdish Bahadur v. Sheoraji*, 6 O. C. 289.

<sup>6</sup> *Muhammad Ewas Ali Khan v. Maheshwar Prasad*, 5 O. C. 118.

<sup>7</sup> *Ugursen Singh v. Ram Dat*, 1 O. C. 210; *Afsal-un-nissa*, Sel. Ca. No. 135, Sel. Ca. No. 53; *Jagannath v. Drigbijai Singh*, 21 O. C. 210.

<sup>8</sup> *Parmeshwar Dat v. Muhammad Abdul Hasan*, 14 O. C. 335.



or order delivery of possession to the landlord who did not succeed in obtaining actual possession under section 60 of the Oudh Act;<sup>1</sup>

or order possession of trees and land held by a tenant under a especial agreement on the ground that under it the tenant's right to possession has ceased;<sup>2</sup>

or that a tenant is a mere tenant-at-will and not a tenant holding at a favourable rate of rent, as held in a suit to contest a notice of ejectment;<sup>3</sup>

or decree possession to a landlord whom notice of ejectment has become cancelled on the finding that the relation of landlord and tenant does not exist between the parties.<sup>4</sup>

In case of conflicting decisions the last constitutes *res judicata*.<sup>5</sup>

A party to a litigation cannot blow both hot and cold. If he gets a revenue suit dismissed on the ground that he is not a tenant, he cannot when sued in a Civil Court, set up a tenancy.<sup>6</sup> So when in a civil suit for wrongful possession his plea that the suit lies in a Revenue Court is accepted, in a suit under section 206, cannot be accepted the plea that the suit should have been brought in a Civil Court cannot be accepted.<sup>7</sup> So if the plea succeeded was that a civil and not a Revenue Court had jurisdiction, a plea in the Civil Court that the Revenue Court had jurisdiction cannot be urged.<sup>8</sup>

A finding against a party in whose favour the decree is does not operate as *res judicata*.<sup>9</sup>

9. Section 142, Specific Relief Act. See *Phool Singh v. Govind Kuar*.<sup>10</sup>

10. Where a Civil Court does not think a suit is cognisable by a Revenue Court, it should return the plaint for presentation to the proper court and should not dismiss it as barred by time.<sup>11</sup>

<sup>1</sup> *Sidhi v. Bhaiya Tirbhawan Dat Ram*, Sel. Ca. No. 180.

<sup>2</sup> *Thakur Din v. Hulas*, 10 O. C. 188.

<sup>3</sup> *Janki Prasad v. Salig Ram*, 2 O. C. 96.

<sup>4</sup> *Muhammad Ali Khan v. Prag Singh*, Sel. Ca. No. 269.

<sup>5</sup> *Ganga Prasad v. Behari Lal*, IV U. D. 327=6 R. D. 541; *Lachman Singh v. Gauri*, IV U. D. 388=5 R. D. 138; *Jadu Nandan Chaube v. Bakhtawar Lal*, XII U. D. 285; *Ghan Shyam v. Mitter Sen*, 14 L. R. Rev. 662; *Shyam Narain v. Prem Narain*, XV U. D. 305; *Badrul Islam v. Bhagwatia*, 15 L. R. Rev. 361=XV U. D. 256.

<sup>6</sup> *Bhoga Singh v. Pokhar Singh*, 8 O. C. 358.

<sup>7</sup> *Hardeo Sahai v. Hallu*, IV U. D. 399; *Mahadeo Singh v. Pudai Singh*, XI U. D. (H. C.) 185; *Muhammad Mehdi Ali Khan v. Sharif-un-nissa*, 3 O. C. 32; *Basti Begam v. Sajjad Mirza*, 2 O. C. 188.

<sup>8</sup> *Kali Charan v. Bholi Baksh*, VIII U. D. (H. C.) 257=8 L. R. Rev. 233=1927 R. C. 344=11 R. D. 279=1927 A. I. R. All. 711=105 I. C. 639; *Raj Mungal Sahu v. Mackinnon*, 18 I. C. 875; *Saira Bibi v. Chandra Pal Singh*, 5 O. W. N. 897=X U. D. (H. C.) 182=114 I. C. 120=1928 R. and Cr. Oudh 503.

<sup>9</sup> *Jagar Nath v. Suraj Baksh Singh*, I U. D. 278.

<sup>10</sup> 5 L. R. Rev. 141=1924 R. C. 201=80 I. C. 399=5 R. D. 436.

<sup>11</sup> *Johari Mal v. Balmakund*, 51 All. 226=1929 A. I. R. All. 669=1929 A. L. J. 890=X U. D. (H. C.) 44=10 L. R. Rev. 363=13 R. D. 680=116 I. C. 802.

**243.** (1) The provisions of the Code of Civil Procedure, 1908, except—  
Application of the Code  
of Civil Procedure, 1908.

- (a) provisions inconsistent with anything in this Act, so far as the inconsistency extends,
- (b) provisions applicable only to special suits or proceedings outside the scope of this Act, and
- (c) the provisions contained in List I of the Second Schedule.

shall apply to all suits and other proceedings under this Act, subject to the modifications contained in List II of the Second Schedule.

(2) The rules mentioned in the Second Schedule of this Act shall be interpreted, in the case of Agra, as referring to rules contained in the First Schedule to the Code of Civil Procedure, 1908, as altered or added to by the High Court of Judicature at Allahabad under section 122 of the Code of Civil Procedure, 1908 and in the case of Oudh as referring to rules contained in the First Schedule to that Code as altered or added to by the Chief Court of Oudh, under section 122 of that Code.

1. Sub-section (1) corresponds to section 264 of the Act of 1926 which corresponded to section 193 of the Act of 1901; and to section 135 of the Oudh Act. Subsection (2) is new and clarifies what might have become a matter for argument

*Provisions applicable to special suits, etc* —E. g., Interpleader suits, suits on Negotiable Instruments, etc.

See lists I and II of the Second Schedule.

2. A suit cannot be stayed under section 10, Civil Procedure Code unless the parties to it and in the previous suit are identical.<sup>1</sup> Where lands in the province of Agra and in another province were let at one lump rent, a suit for arrears of rent in respect of the entire land may be instituted in this province.<sup>2</sup> But in the case of two holdings each separately assessed to rent, if one is transferred by fluvial action to another province, a suit for arrears of rent thereof does not lie here;<sup>3</sup> so where a holding extends to two provinces, a suit for ejectment or recovery of possession may be brought here.

Costs may be disallowed to both parties when they have rendered elucidation of the case difficult by confused pleadings.<sup>4</sup>

<sup>1</sup> *Ram Lal v Nawal Kishore*, XIX U D 263—1938 R D. 935.

<sup>2</sup> *Parmeshar Rai v Sri Niwas*, 11 A. W. N. 47.

<sup>3</sup> *Beni Prasad v. Batulan*, 28 All. 282.

<sup>4</sup> *Dwarka Singh v. Saida Bibi*, 15 L. R. Rev. 654.

An order which without assigning any reason does not award full costs to the successful party is illegal under section 35, Civil Procedure Code and may be revised.<sup>1</sup>

Section 35A. A Collector on appeal cannot award penal costs, where the other party does not object that the claim was false or vexatious.<sup>2</sup>

The imprisonment of one out of 8 judgment-debtors in execution of a decree for arrears of rent and his release under section 58, Civil Procedure Code, did not in any way benefit the other judgment-debtors and the entire crops of all the debtors was held attachable in execution of the decree.<sup>3</sup>

Under section 60 (1) (c), Civil Procedure Code, it was held that agriculturist means a person whose main source of living is agriculture, and the onus of proof is on the person who claims the exemption. All houses occupied by an agriculturist are exempt although a portion of one building be considered sufficient to enable him to earn his livelihood as an agriculturist.<sup>4</sup>

A right to future maintenance was exempt from alienation under the T. P. A. and could not be attached under section 60 (n) Civil Procedure Code.<sup>5</sup>

Section 99 applies.<sup>6</sup>

Where the Commissioner accepted an appeal in the absence of the appellant on the mere statement of the appellant's cousin not duly accredited by him, the irregularity cannot be cured under section 99, Civil Procedure Code.<sup>7</sup>

A person not made a party in the court of first appeal cannot file a second appeal, as his rights remain unaffected by the first appellate court decision.<sup>8</sup> Nor can a person who did not join in a first appeal file a second appeal therein.<sup>9</sup>

Under section 103, the Board in second appeal can determine an issue of fact decided by the court of first appeal contrary to the weight of evidence on the record, if there is sufficient evidence on the record to enable it to do so.<sup>10</sup>

<sup>1</sup> *Aditya Narain Singh v. Ram Dutt*, 14 L. R. Rev. 92=XIV U. D. 36.

<sup>2</sup> *Jagdishwar Prasad v. Inder*, XV U. D. 166.

<sup>3</sup> *Jagram Singh v. Tribeni*, XVIII U. D. 6=1937 R. D. 13.

<sup>4</sup> *Amar Singh v. Ganga Prasad*, XX U. D. 113=1938 R. D. 840.

<sup>5</sup> *Kailas Koer v. Jagdeo Buz Singh*, XIV U. D. 470.

<sup>6</sup> *Data Ram v. Jhaoo Lal*, 1936 A. I. R. All. 200=XVI U. D. 563=1936 R. D. 442.

<sup>7</sup> *Yakub Khan v. Jagmohan Singh*, XX U. D. 44=1938 R. D. 745.

<sup>8</sup> *Lalji Lal v. Uma Prasad*, III U. D. 262=4 R. D. 87.

<sup>9</sup> *Aisha Khanum v. Raghubar*, II U. D. 312=3 R. D. 196.

<sup>10</sup> *Durga Bharti v. Maula*, IX U. D. 38=9 L. R. Rev. 69=1927 R. C. 574=12 R. D. 133.

Section 105 (1) prevents the appellant from questioning in appeal from the decree a previous order setting aside a previous *ex parte* decree passed in the suit.<sup>1</sup>

Since no appeal lies from an order of remand passed in appeal<sup>2</sup> the order may be challenged in a second appeal from the decree passed after the remand,<sup>3</sup> as section 105 (2) will not apply.

No appeal lies under section 104 (2) from an appellate decision on an appeal against the first court's decision returning the plaint in a civil suit to be presented to the revenue court; and if the first court, on the case coming back to it under the orders of the appellate court, decides the case and passes a decree, a plea that the civil court had no jurisdiction and that the appellate court's decision on the first occasion was wrong can be taken in the second appeal from the decree.<sup>4</sup>

Under section 110, Civil Procedure Code, an allegation that the proper remedy was a suit under section 99 of the Tenancy Act of 1926 (present section 183) and not a suit to set aside the original decree for arrears of rent, does not raise a substantial question of law.<sup>5</sup>

Under section 110 the property must be proved to be worth at least Rs. 10,000. Where the subject-matter of a dispute is a *bhaoli* grove the zamindar's share of the produce being one-half, the grove must be worth at least Rs. 20,000.<sup>6</sup>

Section 115 does not apply even if the suit was instituted before the Act came into force.<sup>7</sup>

Section 144 applies.<sup>8</sup>

An application under section 144 is not in execution and limitation for it runs from the date of the decree reversing the first court's decree.<sup>9</sup>

Where a tenant gets compensation by way of restitution under section 144 for his illegal ejectment, the landholder cannot claim to deduct the rent for the period of illegal dispossession.<sup>10</sup>

<sup>1</sup> *Mu. Ali Muhammad Khan v. Shaikat Ali*, III U. D. 33—34 I. C. 713—II U. D. 604—5 R. D. 430.

<sup>2</sup> *Lachman v. Lochan*, 1941 R. D. 49.

<sup>3</sup> *Mahrnia v. Gulzar Singh*, A. I. R. All. 553—1935 A. L. J. 517—1935 R. D. 256—*Sri Ram v. Jai Kishore Lal*, 1937 A. L. J. 1237—1938 All. 79—1938 A. I. R. All. 37—XVI U. D. 318.

<sup>4</sup> *Kashi v. Asharfi Singh*, 1938 A. L. J. 720—1938 A. I. R. All. 511.

<sup>5</sup> *Jugdamba Prasad v. Ram Gopal Singh*, XVII U. D. 99—1936 R. D. 120.

<sup>6</sup> *Naubat Tewari v. Jangli*, XVIII U. D. 168—1937 R. D. 198.

<sup>7</sup> *Jagannath Singh v. Sita Ram*, 1941 R. D. 488.

<sup>8</sup> *Dulari Kuar v. Hanuman*, 10 L. R. Rev. 128; *Balwant Singh v. Gokaran*, B. R. 6 of 1884; *Hots v. Ganga Dhur*, XVIII U. D. 323; *Ram Lal v. Tribhuvan Das*, Oudh Rent Act, Ruling No. 56; *Autar v. Bishun*, 8 L. R. Rev. 319—1927 R. C. 364.

<sup>9</sup> *Kadir Baksh v. Behari*, XVIII U. D. 4—1937 R. D. 21; *Surya Pal Singh v. Bijai Ram*, XIX U. D. 92—1938 R. D. 182.

<sup>10</sup> *Rajjab v. Ghulam Muhammad*, XII U. D. (H. C.) 16—12 L. R. Rev. 181—15 R. D. 514.

A surety under O. 21, r. 40 (3) to produce the judgment-debtor when required by the court cannot be made to discharge the liability of the latter under section 145, Civil Procedure Code.<sup>1</sup>

Where a person stands surety for the costs of an appeal and no property is mortgaged in the surety bond and the costs are not realised from the appellant the successful respondent may proceed against the surety by execution without obtaining a separate decree against him.<sup>2</sup>

Section 149—Court of second appeal may allow payment of court-fees on a relief for damages under section 44 of the Tenancy Act of 1926 (now s. 180) claimed but on which no court-fee was paid in the trial court.<sup>3</sup>

Section 151 cannot be resorted to by the court to set aside a sale where the judgment-debtor has put in an application under O. 21, r. 90, which must be disposed of on the evidence.<sup>4</sup> It should be sparingly used and is not intended to permit a decision on the ground of equity when the weight of evidence is against the view taken.<sup>5</sup>

Section 151 may be used in making an order for restoration of execution proceedings to which O. 9, r. 9 does not apply<sup>6</sup>; or in cancelling a decree against a minor impleaded and treated as a major<sup>7</sup>; or for the ends of justice.<sup>8</sup>

Section 151 cannot be resorted to where an applicant to restore a suit dismissed for default does not show or prove sufficient cause, but if the application itself is dismissed for default it may be restored under section 151.<sup>9</sup>

Section 152 may be utilised to correct a clerical error in the plaint and the decree thereon on an application for amendment.<sup>10</sup>

O 1, r. 9 applies<sup>11</sup>

One of several landholders died and his legal representatives were not brought on the record within time and while the case was deposited under section 276 of the Act of 1926, it was held that on the re-opening of the case, such representatives could be impleaded under Order 1, rule 10 (2).<sup>12</sup>

<sup>1</sup> *Mumtaz Husain v. Murawat Banu*, XV U. D. 198=18 R. D. 243.

<sup>2</sup> *Inamuddin Beg v. Gazaffar Husain*, XVIII U. D. 326=1937 R. D. 518.

<sup>3</sup> *Ishwari v. Debi Sahai*, 15 L. R. Rev. 99=XV U. D. 172.

<sup>4</sup> *Baij Nath Prasad v. Ram Das*, II U. D. 334, 590=3 R. D. 218.

<sup>5</sup> *Sundar Koeri v. Mangal Rai*, XVII U. D. 338=1936 R. D. 457.

<sup>6</sup> *Lalla Singh v. Bishambhar Nath*, XI U. D. 32=11 L. R. Rev. 16.

<sup>7</sup> *Shami v. Jai Dei*, VI U. D. 276=5 L. R. Rev. 331=1924 R. C. 494=11 R. and Cr. L. J. 29=9 R. D. 240.

<sup>8</sup> *Ram Rao v. Udit*, V U. D. 491; *Radhika Nand v. Samat Ali*, IV U. D. 15=1 L. R. Rev. 16=6 R. D. 113.

<sup>9</sup> *Kanauji Lal v. Chironji Lal*, XV U. D. 178=15 L. R. Rev. 254.

<sup>10</sup> *Dudhai v. Surat Narain*, X U. D. 198; *Suraj Mal v. Kewal*, IV U. D. 210=5 L. R. Rev. 269=1924 R. C. 336=10 R. and Cr. L. J. 312=8 R. D. 198, but see *Kedar v. Bhola*, IV U. D. 338=6 R. D. 532.

<sup>11</sup> *Shyam Lal v. Niranjana*, XII U. D. 260=15 R. D. 657.

<sup>12</sup> *Bindhyachal v. Gharib*, 12 L. R. Rev. 63=15 R. D. 204.

Where the names of all the plaintiffs were shown in the plaint, who also signed a mukhtarnama to file it, but only some of them signed the plaint, the defect can be cured by the court acting under Order 1, rule 10, *i. e.*, by joining the nonsigning plaintiffs, or under Order 6, rule 14 by allowing them to sign.<sup>1</sup>

Courts should freely use Order 1, rule 10, instead of dismissing suits on technical grounds.<sup>2</sup>

A person who applies to be added as a plaintiff, if not a necessary party, should not be added.<sup>3</sup>

Order 2 rule (2) does not apply to suits for ejectment of subtenants in respect of plots omitted in a previous suit.<sup>4</sup>

There is no legal bar to ejectment from a portion of a holding, but if a suit is brought to eject from the portion omitted, Order 2, rule 2, may be a bar.<sup>5</sup>

Where a tenant claimed and got from the court the status of an occupancy tenant, his subsequent suit for declaration of rent under section 61 is barred.<sup>6</sup>

Under Order 2, rule 3 a lambardar may sue for arrears of revenue and of profits.<sup>7</sup>

Where a suit in ejectment is for holdings of two classes and the issues are entirely different, the court may order separate trials under Order 2, rule 6.<sup>8</sup>

Where one of several plaintiffs in an ejectment suit, asked to appear personally, fails to do so, the suit cannot be dismissed but should be allowed to be prosecuted by the other co-plaintiffs.<sup>9</sup>

Under Order 3, rule 2, a cousin of a tenant, who had left the village and has been sued in ejectment for illegal subletting cannot be allowed to defend the suit, as he is not the defendant's agent<sup>10</sup> but a son may sue for his father whose address is unknown.<sup>11</sup>

<sup>1</sup> *Chunni Lal v. Tulsi*, XI U. D. 92=11 L. R. Rev. 143=14 R. D. 335.

<sup>2</sup> *Secy. of State v. Raghu Nandan*, IV U. D. 363=3 U. P. L. R. 60=5 R. D. 117.

<sup>3</sup> *Hira Lal v. Anna Purna*, 1938 A. L. J. (B R) 9.

<sup>4</sup> *Debi Prasad v. Nazir Khan*, 14 L. R. Rev. 94=XIV U. D. 38.

<sup>5</sup> *Labajan v. Mukund Lal*, XI U. D. 180=14 R. D. 632; *Kunj Behari v. Birwa Mehnon*, VI U. D. 48=5 L. R. Rev. Oud. 31=1923 R. C. 617=8 R. D. 127.

<sup>6</sup> *Kashi v. Nihal Singh*, 14 L. R. Rev. 599=XIV U. D. 304.

<sup>7</sup> *Bheem Shankar v. Kedar Nath*, 6 R. and Cr. L. J. 23.

<sup>8</sup> *Lal Girjesh Bahadur Pal v. Nageshar Rai*, VII U. D. 114.

<sup>9</sup> *Ram Rao Krishna Jatan v. Sham Nath*, IV U. D. 550=2 L. R. Rev. 233=5 R. D. 316.

<sup>10</sup> *Chheda Lal v. Thakur Behari Lal*, IX U. D. 37=12 R. D. 168.

<sup>11</sup> *Raja Ram v. Ranjitram*, VI U. D. 405=6 L. R. Rev. (O.) 20=1925 R. C. 74=11 R. and Cr. L. J. 62=8 R. D. 303.

Order 3, rule 4. A vakalatnama signed by a person orally authorised to sign is only an irregularity curable under section 99, Civil Procedure Code, and an appeal filed under such a vakalatnama is valid, in the absence of evidence that the appellant had no intention to appeal.<sup>1</sup>

As for Order 5, see List II, item 7, of the Second Schedule.

Pleadings do not act as estoppel on the person pleading so as to prevent him from getting what in law he is entitled to.<sup>2</sup>

Order 6, rule 17 was applied.<sup>3</sup>

An ejectment suit was brought in respect of only a portion of a holding. After the expiration of the period of limitation for filing ejectment suits, the plaint was allowed to be amended by the addition of the omitted plots.<sup>4</sup>

Amendment of the grounds of appeal under Order 6, rule 17 may be allowed,<sup>5</sup> but not one inconsistent with the original pleading.<sup>6</sup>

Where a Commissioner on appeal comes to the conclusion that the appeal should be heard by a Civil Court as his jurisdiction has been ousted by a cross-objection, he should return the memo of appeal for presentation to the proper court, but should not send it direct to the Civil Court.<sup>7</sup>

Time ought to be allowed to make up a deficiency in court-fees on a memo of appeal.<sup>8</sup>

Where two co-sharers, signatories to a plaint, allege that their signatures were obtained by fraud and that they do not wish to join in the suit, the plaint might be thrown out under Order 7, rule 11.<sup>9</sup>

A fresh suit may be brought when a suit has been dismissed under Order 9, rule 3.<sup>10</sup>

Where a suit was dismissed for failure of plaintiff to deposit a certain sum of money awarded as damages because he was given time to implead a defendant the dismissal is under rule 8, and a fresh suit against the

<sup>1</sup> *Bulkechore Singh v. R. Ramullah*, 15 L. R. Rev. 69=XV U. D. 260.

<sup>2</sup> *Lachman Pande v. Shyam Dei* XVIII U. D. 161.

<sup>3</sup> *Anrudh Rai v. Parmeshri Narain Singh*, VIII U. D. 27=8 L. R. Rev. 156=1927 R. C. 157=11 R. D. 118.

<sup>4</sup> *Parbhu Dial v. Khali*, II U. D. 483.

<sup>5</sup> *Sant Lal v. Sheoram Singh*, IV U. D. 631.

<sup>6</sup> *Brij Kishore v. Abdul Rahmaan*, 14 L. R. Rev. 627=XIV U. D. 322; *Pauhari Saran v. Sundar*, 1939 A. L. J. (B. R.) 66=XX U. D. 242.

<sup>7</sup> *Sukhdeoji v. Ram Lal*, 1932 A. L. J. 108=1933 A. I. R. All. 108=17 R. D. 78=14 L. R. Rev. 15=XIV U. D. (H. C.) 19.

<sup>8</sup> *Ram Charan Singh v. Bhugwan Das*, XIX U. D. 231=1938 R. D. 660, referring to *Janardan v. Kantika*, 1938 R. D. 235.

<sup>9</sup> *Ram Nuth v. Bhogwati Prasad*, XIV U. D. 524=14 L. R. Rev. 896.

<sup>10</sup> *Muharaj Narain Prasad v. Ruma Nand*, XI U. D. 95=14 R. D. 395; *Suba Singh v. Mahaseo*, IX U. D. 23=9 L. R. Rev. 28=1927 R. C. 474=12 R. D. 190.

old defendant and the defendant sought to be added is barred under rule 9.<sup>1</sup>

Where a zamindar issues a notice of ejectment under section 81 of the Act of 1926, but allows it to be dismissed for default before it becomes a suit, his suit for arrears of rent under section 132 of that Act is not barred by Order 9, rule 9.<sup>2</sup>

Where the plaintiff had no notice of the date fixed and of the change of court the suit should be restored as it is not a case of default.<sup>3</sup>

An application to restore a petition for revival of a suit dismissed for default which is itself dismissed for default may be granted under Order 9, rule 9 read with section 151, Civil Procedure Code.<sup>4</sup>

Under Order 9, rule 9 a suit should not be decided on the merits when the plaintiff is absent.<sup>5</sup>; or dismissed for default while the plaintiff has gone to call his *mukhtar*, previous adjournments not being attributable to him.<sup>6</sup>

A suit should not be dismissed for default at an adjourned hearing for unavoidable absence of the plaintiff thereat, the suit having been previously adjourned several times to suit the convenience of the Court, and the course of the litigation showing no intention on plaintiff's part to drop the suit.<sup>7</sup>

Where a case is taken up in camp, its disposal without due notice to the parties of the place and date is good ground for restoration.<sup>8</sup>

Where the defendant appears and admits a part of the claim, the court should not dismiss the whole suit for plaintiff's absence but only that portion of the claim which is not admitted.<sup>9</sup>

A suit should not be restored under Order 9, rule 9 except for sufficient reason<sup>10</sup>; and if there is sufficient cause, *e. g.* that the case

<sup>1</sup> *Ram Rao Krishnu Jatan v. Dudd Nath*, XIX U. D. 200—1938 R. D. 614.

<sup>2</sup> *Ram Lal v. Peurey Lal*, X U. D. 186—13 R. D. 699.

<sup>3</sup> *Sukhmani Singh v. Lantoo*, IV U. D. 531—2 L. R. Rev. 225—8 R. and Cr. L. J. 55—5 R. D. 300.

<sup>4</sup> *Tusadduk Husain v. Bhagwan Baksh* VI U. D. 114—5 L. R. Rev. Oad. 89—1923 R. C. 609—1 O. W. N. 109—8 R. D. 152.

<sup>5</sup> *Bhole v. Munni Lal*, VIII U. D. 19—8 L. R. Rev. 115—1927 R. C. 103—11 R. D. 84.

<sup>6</sup> *Ajodhya Prasad v. Ram Phal*, VI U. D. 174—5 L. R. Rev. 222—1924 R. C. 267—10 R. and Cr. L. J. 277—8 R. D. 167.

<sup>7</sup> *Mithay Singh v. Prag Narain*, 14 L. R. Rev. 214—XIV U. D. 101.

<sup>8</sup> *Asa Ram v. Tula Ram*, IX U. D. 103—9 L. R. Rev. 294—12 R. D. 647.

<sup>9</sup> *Muh. Mustafa Khan v. Rameshwar*, VIII U. D. 69—8 L. R. Rev. 281—1927 R. C. 311—11 R. D. 644.

<sup>10</sup> *Krishna Sarup v. Raj Bahadur Singh*, 12 L. R. Rev. 142—XII U. D. (H. C.) 148; *Salamatullah v. Mukhan Lal*, III U. D. 674—1 U. P. L. R. 29—63 I. C. 69—4 R. D. 424.



was taken out of its turn and the party went to call his *vakil* and the application to restore is made immediately, the case should be restored.<sup>1</sup>

Order 9, rule 9 applies to bar a fresh suit on the same cause of action in a suit for ejectment;<sup>2</sup> even though the second suit is by some only of the former plaintiffs.<sup>3</sup> An affidavit is not prescribed and is not necessary.<sup>4</sup> Under sub-rule (2) a notice must be issued before the restoration petition is heard.<sup>5</sup>

Dismissal, for default, of a suit against *A* does not bar a similar suit against *B* who is not the heir of *A*.<sup>6</sup>

Where a suit to eject a person as sub-tenant is dismissed for default after the defendant had set up a tenancy-in-chief in himself, a fresh suit for ejectment is barred.<sup>7</sup>

Where a suit for ejectment of a sub-tenant in which the defendant sets up a claim of a right of a permanent character, *e. g.*, tenancy in chief, mortgage, etc., is dismissed for plaintiff's default he cannot sue again on the same allegations for ejectment the same defendant.<sup>8</sup>

A landholder issued notice under s. 86 of the Act of 1926 to the recorded statutory tenant of a holding and his sub-tenant, *B*, for ejectment. The sub-tenant alone contested the notice, on the ground that he was the statutory tenant. The proceeding was dismissed as the applicant was absent on the date of hearing. The recorded tenant abandoned the holding and then the landholder sued for ejectment as a trespasser under s. 44 of that Act. One of the defences was that the suit was barred as the previous proceeding had been dismissed in default. It was held that there was a fresh cause of action for the suit which was therefore not barred, inasmuch as in the previous suit *B* had to be described as sub-tenant and was sued as such, and in the present suit he was sued as a trespasser which he really was and had been all along.<sup>9</sup>

The cause of action against *B* in the first proceeding arose in favour of the recorded tenant, and, in the suit, against the landholder.

<sup>1</sup> *Raghu Nandan Rai v Sarup*, IX U. D. 156=9 L. R. Rev. 328=12 R. D. 801; *Bhagwati Prasad Singh v. Lal Muhammad*, XVIII U. D. 16.

<sup>2</sup> *Jagan Nath v. Mahadeo*, XI U. D. 41=11 L. R. Rev. 56=14 R. D. 157; *Dwarka Prasad v. Tata*, 12 L. R. Rev. 172=15 R. D. 513; *Majidunnissa v. Muh. Hamid Ali*, 2 A. L. J. 118; *Molhu v. Marjadi*, X U. D. 91=10 L. R. Rev. 133=13 R. D. 387.

<sup>3</sup> *Brahmdeo v. Nepal Rai*, X U. D. 4=10 L. R. Rev. 11=13 R. D. 148.

<sup>4</sup> *Bhagwati Prasad v. Lal Muhammad*, XVIII U. D. 16=1937 R. D. 9.

<sup>5</sup> *Muh. Abbas v. Baqar Husain*, XVIII U. D. 335=1937 R. D. 521. See, however, *Ram Kumar v. Maiku*, XVIII U. D. 327=1937 R. D. 513.

<sup>6</sup> *Prag Lonia v. Gopi Lal*, XIV U. D. 50=14 L. R. Rev. 246.

<sup>7</sup> *Durga Bhuj v. Barsati*, 14 L. R. Rev. 197=XIV U. D. 79.

<sup>8</sup> *Mangru Ram v. Chhedi*, XVIII U. D. 208=1937 R. D. 334, relying on XVI U. D. 31.

<sup>9</sup> *Badu v. Hulasi*, XIX U. D. 33=1938 R. D. 57.

Dismissal of a suit for ejectment for default in one year under Order 9, rule 8, bars a suit for ejectment in a subsequent year.<sup>1</sup> See however, *Ram Kumar v. Maiku*.<sup>2</sup>

When an ejectment suit is withdrawn without leave, a fresh suit would be barred<sup>3</sup>, but this decision does not apply to *shikmis* and sub-tenants as held in X U. D. 3. Similarly B R 3 of 1927 (cited above) and Order 9, rule 9, bar a fresh suit when the previous suit has been dismissed for default but this does not apply to *shikmis* of *sir land*.<sup>4</sup>

To support an application under Order 9, rule 13, an affidavit is not essential; the Court may, however, order it to be filed.<sup>5</sup>

Where the presiding officer does not attend court during the hours fixed for sitting but takes up the case afterwards and decrees it *ex parte* the *ex parte* decree should be set aside.<sup>6</sup>

The applicant must be allowed to make good his plea of sufficient cause under Order 9, rule 13.<sup>7</sup> Where defendant present in court asks for adjournment because his counsel is not free and the fault, if any, for the non-appearance lies with the counsel and not with the client the court should rehear the case.<sup>8</sup>

Where application to set aside *ex parte* decree is promptly made after dismissal, punitive costs should not be awarded to the other side for restoration of the case.<sup>9</sup>

Issues should be framed as under Order XIV, C. P. C.,<sup>10</sup> whether or not written statements have been put in.<sup>11</sup>

If the pleadings are obscure the court should insist on the parties to explain what their pleadings are and deal with the points that arise in a judicial and adequate manner.<sup>12</sup>

<sup>1</sup> *Janardan v. Ram Dhari*, B R. 3 of 1927—VIII U. D. xlv—8 L. R. Rev. 287—1927 R. C. 309, but see *Dhan Dei v. Bhagwati*, 1926 R. C. 507—VII U. D. 231—7 L. R. Rev. 401—10 R D 267.

<sup>2</sup> XVIII U. D. 327—1937 R. D. 513.

<sup>3</sup> *Raja Sri Krishna Dutta v. Ram Achhaibar*, B. R. 6 of 1925—VI U. D. ex. The leave may be implied, *Hamid Husain v. Ram Nohar*, B. R. 7 of 1927.

<sup>4</sup> *Tulsi v. BARKH Chand*, XI U. D. 155—11 L. R. Rev. 303—14 R. D. 513; *Mahtab Singh v. Roshan*, XI U. D. 228.

<sup>5</sup> *Prem Narain v. Ahmad Shah*, VI U D. 265—5 L. R. Rev. 325—1925 R. C. 478—9 R. D. 229.

<sup>6</sup> *Gopal Singh v. Kailash Gir*, XIV U. D (H. C ) 90

<sup>7</sup> *Sampat Singh v. Bir Bahadur Singh*, IV U D 638—3 L. R. Rev. 38—8 R. and Cr. L. J 70, 78.

<sup>8</sup> *Kali Charan v. Bindu Prasad*, 15 L. R. Rev. 387—XV U. D. 468.

<sup>9</sup> *Partab v. Sheo Kedar Singh*, 1938 R D. 939—XIX U. D. 267.

<sup>10</sup> *Baldeo v. Nand Kishore*, 4 A. W. N. 25.

<sup>11</sup> *Ram Sarup v. Debi Din*, IV U D. 624—2 U. P. L. R. 149—5 R. D. 381.

<sup>12</sup> *Dwarka Singh v. Said Bibi*, 15 L. R. Rev. 652.

An appellate Court may frame proper issues,<sup>1</sup> and cannot decide a case on points not raised in the suit itself, though they are raised in another suit not between the same parties.<sup>2</sup>

Issues should be framed not only from the plaint but also from other materials<sup>3</sup>

A mixed question of fact and law cannot be raised for the first time in first appeal.<sup>4</sup>

Nor can an issue whether the relation of landholder and tenant exists between the parties be so raised.<sup>5</sup>

The Court may under Order 17, rule 1 adjourn a case at any stage, provided it fixes a future date and provides for cost of adjournment.<sup>6</sup>

Where a plaintiff after closing his evidence made default in appearance and the Court dismissed the suit under Order 17, rule 2, his application for restoration should not be rejected without recording reasons.<sup>7</sup>

The Court is empowered to dismiss a suit for default at an adjourned hearing, with the effect that a fresh suit on the same cause of action is barred.<sup>8</sup>

Order 17, rule 3 presupposes the presence in Court of the party in default, his default consisting in not producing evidence or in neglect to abide by or obey orders. Order 17, rule 2 applies when the party is absent. Therefore if on the day fixed for evidence, the defendant does not appear, and the court proceeds to decide the case on merits as it stood and passes a decree, the decree is *ex parte* and liable to be set aside under Order 9, rule 13.<sup>9</sup>

When the parties are present and some witnesses have been examined, rule 3 applies.<sup>10</sup>

A suit for ejectment dismissed under Order 17, rule 3, does not bar a fresh suit for ejectment when no issues were framed or decided in the previous suit.<sup>11</sup>

<sup>1</sup> *Kamta Siromini Prasad Singh v. Biput*, VI U. D. 157=5 L. R. Rev. (Oudh) 121=1924 R. C. 250=10 R. and Cr. L. J. 246=7 R. D. 548.

<sup>2</sup> *Bhola v. Ganesh*, XV U. D. 389.

<sup>3</sup> *Babu Lal v. Abdul Husain*, IV U. D. 582=2 L. R. Rev. 239=5 R. D. 345.

<sup>4</sup> *Karhari v. Sita Ram*, XIX U. D. 57=1938 R. D. 107.

<sup>5</sup> *Ram Sujawan v. Ganesh Prasad*, XIX U. D. 51.

<sup>6</sup> *Ram Charan Singh v. Bhagirathi*, 14 L. R. Rev. 623=XIV U. D. 327.

<sup>7</sup> *Zorawar Singh v. Saheb Singh*, VII U. D. 111=7 L. R. Rev. 126=1926 R. O 161=2 R. and Cr. L. J. 149=10 R. D. 446.

<sup>8</sup> *Guptar Murao v. Bhaiya Mahadeo Prasad*, V U. D. 420=4 L. R. Rev. 177=1923 R. C. 53=9 R. and Cr. L. J. 183=7 R. D. 229.

<sup>9</sup> *Mahabir Ram v. Ram Lal*, XV U. D. 309=15 L. R. Rev. 549.

<sup>10</sup> *Mukund Lal v. Sahai*, XVI U. D. 593.

<sup>11</sup> *Mathura v. Sant Prasad*, X U. D. 180, 225=13 R. D. 623.

When a defendant gets a case adjourned on the condition of payment of costs and does not pay it, the suit ought not to be decreed summarily but on the evidence on the record.<sup>1</sup>

Order 20, rule 3 shows that the judgment should indicate the issues in the case, and the party on whom the *onus* lies should be pointed out.<sup>2</sup>

Order 21, rule 2 is applicable to payments of money under a Revenue Court decree.<sup>3</sup>

One of several landholders in whose favour a decree for ejectment has been passed may execute it. At any rate, if he has been allowed by the Court to execute it and does execute it, some of the others cannot by saying that they did not want ejectment nullify the decree and get the ejectment cancelled.<sup>4</sup>

Where a decree for joint possession of *sir* is executed under Order 21, rule 35 (2), the decree-holder is entitled to ask the revenue court to enter him as proprietor of his *sir* in the *sir*-land, and such entry will entitle him to get his share of the *sir*-land on partition and to get profits but it will not entitle him to get physical possession of any portion of it.<sup>5</sup>

Order 21, rule 54 prevents a zamindar from granting occupancy rights in a village under attachment under a Court's order.<sup>6</sup>

Order 21, rule 54 (2) does not require a particular notice to the judgment-debtor, and absence of such notice does not mean material irregularity.<sup>7</sup>

A house is immovable property and the judgment-debtor may on its sale pay in the money under Order 21, rule 89 (1).<sup>8</sup>

Order 21, rule 90, applies.<sup>9</sup>

Order 21, rule 100 and rule 101 apply.<sup>10</sup>

Order 9, rule 13, does not apply to applications under Order 21, rule 100.<sup>11</sup>

<sup>1</sup> *Mulkhan v. Kunhaya*, X U. D. 214—14 R. D. 86.

<sup>2</sup> *Sat Narain Mani v. Bujharat*, XVIII U. D. 264—1937 R. D. 415.

<sup>3</sup> *Karan Singh v. Gobind Singh*, B. R. 1 of 1891. See B. R. 12 of 1884.

<sup>4</sup> *Randhir v. Sahodra*, III U. D. 633—4 R. D. 462.

<sup>5</sup> *Kalska Singh v. Basdeo Singh*, XV U. D. 175—15 L. R. Rev. 111.

<sup>6</sup> *Hanuman Prasad v. Hubib Hasan*, X U. D. 67—13 R. D. 429.

<sup>7</sup> *Mahipal Bahadur v. Ram Bahadur*, III U. D. 52—1 U. P. L. R. 7—52 I. C. 167—5 R. D. 453.

<sup>8</sup> *Rang Lal v. Bishu Nath Singh*, 12 L. R. Rev. 38—XII U. D. 60—15 R. D. 155.

<sup>9</sup> *Indar Koer v. Dharam Narain*, 1930 A. I. R. All. 556—14 R. D. 482.

<sup>10</sup> *Deo Saran Rai v. Sripal*, B. R. 4 of 1925—6 L. R. Rev. 143—11 R. and Cr. L. J. 171—VI U. D. 1xxvii—1925 R. C. 151.

<sup>11</sup> *Parey Lal v. Brij Mohan*, B. R. 8 of 1924—VI U. D. 233 and lii—5 L. R. Rev. 391—1924 B. C. 578—10 R. and Cr. L. J. 344.

Order 22, rule 4 and Order 22, rule 2 apply.<sup>1</sup>

Order 22, rule 3 applies.<sup>2</sup>

Under Order 22, rule 4 an appeal abates only when it is before a competent tribunal. Where the Commissioner to whom an appeal had been presented found that he had no jurisdiction to hear it, and returned the memorandum of appeal for presentation to the proper court, it must be taken that there never had been appeal in his court, and hence if a respondent died while the matter was in the Commissioner's Court, there has been no abatement. Where the appeal is taken to the District Judge as the proper court of appeal, death has already taken place, and the appellant has to inform the court according to the rules framed in that behalf.<sup>3</sup>

Where during the pendency of an appeal, in a suit by a number of joint tenants forming a joint Hindu family against other joint tenants some of the plaintiffs or defendants die and their representatives are not brought on the record, there is no abatement as the survivors represent all the co-tenants.<sup>4</sup>

Where the tenant appellant from a decree ordering his ejection dies, his heir may continue the appeal, but cannot raise any new plea.<sup>5</sup>

An appeal does not abate as a whole when the representatives of one only of the respondents who has died are not brought on the record; and the decree passed on the appeal holds good as against the respondents who are represented before the Appellate Court.<sup>6</sup>

When a suit is dismissed for default and afterwards restored and some defendants die in the interval, the suit is dead between the two dates and hence the period between them should be allowed for an application to implead the legal representatives of the deceased.<sup>7</sup>

A decree passed against a dead person is a nullity.<sup>8</sup>

If the plaintiff knew and has known for considerable time that his *ex parte* decree for rent against a deceased tenant was a nullity, he should not be allowed to behave the abatement of the suit and the decree set aside, so that the heir of the deceased be brought on the record, and a proper decree passed.<sup>9</sup>

<sup>1</sup> *Bent v. Sri Thakurji Maharaj*, 12 R. and Cr. L. J. 4—VI U. D. 474—6 L. R. Rev. 234—1925 R. C. 468—9 R. D. 62.

<sup>2</sup> *Gobind Prasad v. Basdeo*, V U. D. 233—1922 R. C. 295—7 R. D. 428; *Madganjun v. Ram Naresh*, XI U. D. 210—11 L. R. Rev. 373—15 R. D. 29.

<sup>3</sup> *Sudama Rai v. Bisheshwar Prasad*, XV U. D. (H. C.) 311.

<sup>4</sup> *Sarbat v. Zaminpal*, 14 L. R. Rev. 389—XIV U. D. (H. C.) 90.

<sup>5</sup> *Ashfaq Husain v. Jivani*, XIV U. D. 294—14 L. R. Rev. 569.

<sup>6</sup> *Subkaran Singh v. Raghubans*, I U. D. 223—26 I. C. 523.

<sup>7</sup> *Ram Dour v. Partab Narain Singh*, XII U. D. 121.

<sup>8</sup> *Ghanshyam Das v. Yusuf*, XIV U. D. 206.

<sup>9</sup> *Raj Buhadur v. Adm. Gen.*, 1938 A. L. J. (B. R.) 128—XIX U. D. 173—1938 R. D. 431.

The death of one of several defendants causes abatement only as regards him, unless the right to sue does not survive, in which case the whole suit abates, or the presence of the representatives of the deceased is essential to the disposal of the suit.<sup>1</sup>

The suit abates against the deceased only, unless the circumstances are such that abatement as against the deceased involves dismissal of the suit against the rest. In a suit to eject the heirs of deceased tenant who all claim as collaterals, the death of one of them does not cause abatement against the others who are nearer collaterals than the deceased.<sup>2</sup> Two of the respondents (defendants in a suit under section 180) died pending the appeal and their representatives were not brought on the record. The appeal abates altogether.<sup>3</sup>

Death of a joint tenant of a joint tenancy, who is a respondent, causes the whole appeal to abate.<sup>4</sup>

A suit does not abate if plaintiff brings on the record those representatives of whose existence he is aware, although there are other representatives.<sup>5</sup>

A plaintiff in an ejectment suit died. Two claimants to his representation having appeared the suit was adjourned pending the disposal of mutation proceedings. On the adjourned date, the suit was dismissed for default, although the mutation proceedings were still pending. The Court not having acted under O. 22, r. 5, its proceedings were null and void, and the dismissal for default did not bar a fresh suit for ejectment by the legal representatives of the deceased plaintiff.<sup>6</sup>

The Court before which a suit is pending is the Court to pass the order of abatement. When it does not, the court before which a fresh suit is brought cannot dismiss it because the previous suit had abated.<sup>7</sup>

Under O. 22, r. 9, Court has power to extend the time.<sup>8</sup>

There is no limitation for an application under O. 22, r. 10.<sup>9</sup>

<sup>1</sup> *Ram Det v. Jurawan*, XII U. D. (H. C.) 8. See *Daby v. Jainti Devi*, VII U. D. 80—7 L. R. Rev. 99—1926 R. C. 119—12 R. and Cr. L. J. 103—10 R. D. 438.

<sup>2</sup> *Rambodh Singh v. Sahajoo Singh*, XV U. D. 422—15 L. R. Rev. 667.

<sup>3</sup> *Bisheshar Prasad v. Jagar Nath*, XVII U. D. 321—1936 R. D. 473.

<sup>4</sup> *Ram Nareesh v. Kailash Ram*, XVI U. D. 87.

<sup>5</sup> *Charan v. Santu*, XIV U. D. 223.

<sup>6</sup> *Bishambhar Prasad v. Naubat*, IX U. D. 75—9 L. R. Rev. 255—12 R. D. 455.

<sup>7</sup> *Ghanshyam Das v. Yusuf*, XIV U. D. 206.

<sup>8</sup> *Sahdeo v. Mannu*, V U. D. 378—4 L. R. Rev. 148—9 R. and Cr. L. J. 169—6 R. D. 82. Ignorance as to death is a sufficient cause for extension, *Ram Nareesh v. Kailash Ram*—XVI U. D. 87—16 L. R. Rev. 173.

<sup>9</sup> *Durre Najaf v. Khairati*, IV U. D. 538—2 L. R. Rev. 226—5 R. D. 306.

Dismissal of a suit for ejectment for not complying with the order of the Court does not bar a fresh suit for ejectment brought some years later.<sup>1</sup>

O. 23, r. 1 has been applied to rent suits<sup>2</sup>; and to ejectment suits.<sup>3</sup>

A suit should not be allowed to be withdrawn by the Civil Court to which the case has been sent back by the Appellate Court to work out the partition of a holding as directed by the latter, as that would be nullifying the order of a superior court.<sup>4</sup>

To bar a fresh suit under O. 23, r. 1 the subject-matter of the two suits must be the same. Where a suit manifestly defective for misjoinder of plaintiffs is withdrawn without leave, a fresh suit by proper plaintiffs is not barred.<sup>5</sup>

A suit for ejectment of a trespasser on the ground that the real tenant had died and defendant was not entitled to the holding is as to a different subject-matter from a subsequent suit to eject him on the ground that the real tenant had surrendered the holding.<sup>6</sup>

Where a tenant on being dispossessed by his landholder brings a suit under section 180 and also a suit under section 183 and gets the former stayed pending the decision of the latter, neither section 10 nor O. 23, r. 1, bars the hearing of the suit under section 183, as the suit under section 180 has not been withdrawn.<sup>7</sup>

Where a plaintiff withdraws his suit for ejecting a subtenant without leave to bring a fresh suit, because a suit for correction of papers in respect of the holding was decided in favour of the subtenant and against himself he cannot after success in appeal in the

<sup>1</sup> *Mathura v. Sant Prasad*, X U. D. 180, 225—13 R. D. 623.

<sup>2</sup> *Gopal Singh v. Jainti*, B. R. 4 of 1884; *Madho Prakash v. Murli*, 5 All. 406; *Mul Chand v. Bhikari*, 7 All. 624—5 A. W. N. 129; *Madho Singh v. Ram Kuar*, V U. D. 312—4 L. R. Rev. 13—9 R. and Cr. L. J. 67—1922 R. C. 465—7 R. D. 527; *Rania v. Hasina*, IV U. D. 298; *Pooran v. Munna*, III U. D. 617; *Amir Singh v. Jai Ram*, V U. D. 36; *Muhammad Ahmad Husain v. Johari*, V U. D. 213—1922 R. C. 230—7 R. D. 410; *Bhagwan Singh v. Jhabba Lal*, 1922 R. C. 248—V U. D. 73; *Bacha v. Muhammad Umar*, 1923 R. C. 155—7 R. and Cr. L. J. 241—V U. D. 461—4 L. R. Rev. 231—7 R. D. 267; *Abadi v. Ketki*, VI U. D. 362—6 L. R. Rev. 65—11 R. and Cr. L. J. 96—1924 R. C. 426—7 R. D. 261; *Abdul Qadir v. Sita Ram*, VII U. D. 106—12 R. and Cr. L. J. 141—1926 R. C. 171—7 L. R. Rev. 132—10 R. D. 462; *Bhagwati Prasad Singh v. Badri Narain*, VIII U. D. 29—9 L. R. Rev. 147—11 R. D. 124; *Kamar Uddin v. Garhat Ali*, 1927 R. C. 213—10 R. D. 824—VII U. D. 244—8 L. R. Rev. 193.

<sup>3</sup> *Sukhraj Singh v. Ghanshyam*, 13 L. R. Rev. 53—XIII U. D. 190—15 R. D. 177.

<sup>4</sup> *Ram Prasad v. Durga Prasad*, XII U. D. 53—15 R. D. 241.

<sup>5</sup> *Chedu v. Angan Lal*, VII U. D. 46—7 L. R. Rev. 62—1926 R. C. 221—12 R. and Cr. L. J. 175—10 R. D. 132.

<sup>6</sup> *Bal Govind v. Sat Narain Lal*, 1938 A. L. J. (B. R.) 2—1938 R. D. 174.

<sup>7</sup> *Ram Lagan v. Musar*, XI U. D. 203.

correction case sue again for ejectment.<sup>1</sup> If on such a suit being brought, the alleged subtenant contests it claiming rights of a permanent character and the plaintiff probably aware of his own doubtful title withdraws it without leave he cannot subsequently sue under section 59 the alleged subtenant and the landlord, as the subject-matter of the later suit is substantially the same as that of the previous suit.<sup>2</sup>

A second suit is barred only if the defendant claimed permanent rights in himself, *e g*, if in a suit by a tenant against his subtenant the latter claimed the tenancy-in-chief in an occupancy holding.<sup>3</sup>

Permission to sue may be implied.<sup>4</sup> It is not necessary that the court should expressly grant leave to withdraw with liberty to bring a fresh suit. Where in an ejectment suit from specified plots, the plaintiff applies to withdraw with liberty to bring a fresh suit in respect of some of the plots, and the court in its decree and judgment deals only with the rest of the plots, leave may be implied and a suit in respect of the withdrawn plots is not barred.<sup>5</sup>

Permission under O. 23, r. 1, to bring a fresh suit may be implied from the form of the order,<sup>6</sup> and from the attendant circumstances as in the case noted in the footnote.<sup>7</sup>

A suit for ejectment withdrawn without leave bars a suit for ejectment in a subsequent year,<sup>8</sup> whether the defendant be a trespasser or a non-occupancy tenant.<sup>9</sup>

<sup>1</sup> *Mahangu Dhobi v. Kesari*, VIII U. D. 116—8 L. R. Rev. 347—1927 R. O. 414—11 R. D. 561.

<sup>2</sup> *Ram Nandan v. Nohar*, 15 L. R. Rev. 263. See also *Abdul Hamid Khan v. Asghar Ali*, XV U. D. 267—15 L. R. Rev. 44.

<sup>3</sup> *Sukhraj Singh v. Ghanshyam*, XII U. D. 190—12 L. R. Rev. 53—15 R. D. 177 ; *Farhat Ali v. Kamar-ud-din*, XII U. D. 198—12 L. R. Rev. 344—15 R. D. 598, *Kanta v. Manraj*, 15 L. R. Rev. 1—XV U. D. 31.

<sup>4</sup> *Hamid Husain v. Ram Nohar*, B. R. 7 of 1927—VIII U. D. 125—8 L. R. Rev. 367—1927 R. C. 425 ; *Muh. Abdul Razzak v. Lakhpat*, 9 L. R. Rev. 228—IX U. D. 111—12 R. D. 388, but see *Lachmin Koer v. Sitla Prasad*, 1926 R. O. 47—VII U. D. 8 ; *Mahangoo v. Ram Kishun Das*, 1939 A. L. J. (B. R.) 88. See footnote 6, below.

<sup>5</sup> *Ram Paratap Singh v. Sirnet Singh*, 14 L. R. Rev. 134—14 L. R. Rev. 445.

<sup>6</sup> *Muh. Abdul Razaq v. Lakhpat*, IX U. D. 111—9 L. R. Rev. 228—12 R. D. 380, see *Nand Kishore v. Raghu Nandan Lal*, VII U. D. 20—7 L. R. Rev. 345—1926 R. C. 425—10 R. D. 298, where a grant of leave was inferred because the Court considered withdrawal unnecessary. See footnote 4, above.

<sup>7</sup> *Ballabh Das v. Sri Krishna Sundari*, XV U. D. 30.

<sup>8</sup> *Sri Krishna Datt v. Ram Achhaibar*, B. R. 16 of 1925—11 R. and Cr. L. J. 249—6 L. R. Rev. 248—VI U. D. cx—1925 R. C. 510 ; *Brij Raj Saran v. Narain Singh*, 6 L. R. Rev. 181—1925 R. C. 35—VI U. 442—8 R. D. 7 ; *Dhan Dei v. Bhagwati*, 7 L. R. Rev. 401—1926 R. C. 507—VII U. D. 236—10 R. D. 269. *Contra*, *Kumari v. Adit*, VI U. D. (H. C.) 547—1925 R. C. 447—6 L. R. Rev. 198—89 I. C. 329—8 R. D. 26 ; *Bhullan v. Dasrath*, 113 I. C. 748—10 L. R. Rev. 134—IX U. D. (H. C.) 85. See *Mahadeo Prasad v. Data Din*, XIV U. D. 180—14 L. R. Rev. 416 ; *Raj Kumar v. Parag*, XV U. D. 263—15 Rev. 438.

<sup>9</sup> *Muh. Asghar v. Manna*—XVIII U. D. 215—1937 R. D. 378.



Withdrawal by one of several plaintiffs without the consent of the others is not permitted.<sup>1</sup> Withdrawal without permission does not bar a second suit when the subject-matter of the two suits are not the same.<sup>2</sup>

Where one of several plaintiffs withdraws from the suit, the members differed as to whether it could proceed.<sup>3</sup>

Permission cannot be presumed.<sup>4</sup>

The fact that the other persons (co-sharers or co-tenants) have also been impleaded as plaintiffs or defendants does not bar the application of the rule in O. 23, r. 1 ((3)).<sup>5</sup>

A suit for ejectment against a person as trespasser by a lambardar as representing the entire body of co-sharers bars a subsequent suit for ejectment on the same grounds.<sup>6</sup>

O. 23, r. 1, does not apply to enhancement suits, where no special rights were set up by the defendant.<sup>7</sup> Nor to suits against *sir* tenants or subtenants.<sup>8</sup> This rule does not apply where the order is of dismissal.<sup>9</sup> Withdrawal of an ejectment suit by the guardian of a minor binds the minor in the absence of fraud.<sup>10</sup> Application under O. 23, r. 1, must be granted or rejected *in toto*. Court cannot grant permission to withdraw and refuse leave for a fresh suit.<sup>11</sup> Petition to withdraw should be granted as to the whole of a suit and should not be granted as to a part or it should be rejected *in toto*.<sup>12</sup>

<sup>1</sup> *Muh. Ilyas v. Faqira*, B. R. 8 of 1923=1923 R. C. 530=10 R. and Cr. L. J. 53=V U. D. 1=5 L. R. Rev. 78; *Iffat-ul-ussu v. Durga*, 1926 R. C. 162=VII U. D. 110=7 L. R. Rev. 135=10 R. D. 465. See footnote 6, last page.

<sup>2</sup> *Bandho v. Chaurasi*, VI U. D. 144=10 R. and Cr. L. J. 94=5 L. R. Rev. Oudh 105=1924 R. C. 223=9 R. D. 537.

<sup>3</sup> *Kali Charan Rai v. Sakhawat*, III U. 306=1 U. P. L. R. (B. R.) 14=52 I. C. 185=4 R. D. 129; *Tirath Raj v. Gajadhar*, III U. D. 146. See footnote 1, above.

<sup>4</sup> *Lachmin Koer v. Sitla Prasad*, VII U. D. 8=7 L. R. Rev. 90=1926 R. C. 47=12 R. D. and Cr. L. J. 497=10 R. D. 1, see also *Munni v. Raghubar*, 8 R. D. 278=VI U. D. 373.

<sup>5</sup> *Farhat Ali v. Kamar-ud-din*, XII U. D. 198=12 L. R. Rev. 344.

<sup>6</sup> *Ameer Singh v. Bibi*, 14 L. R. Rev. 64.

<sup>7</sup> *Raja Ram v. Bhagi*, 11 Rev. and Cr. L. J. 181=6 L. R. Rev. 130=VI U. D. 429=1925 R. C. 215=6 R. D. 12; *Mannoo Lal v. Raghunath Singh*, B. R. 10 of 1926=8 L. R. Rev. 83=1927 R. C. 82=VII U. D. xlv.

<sup>8</sup> *Naseer Ahmad v. Farhat Ali*, X U. D. 2=10 L. R. Rev. 248=13 R. D. 156.

<sup>9</sup> *Surja v. Ghasi Ram*, VI U. D. 246=5 L. R. Rev. 309=1924 R. C. 481=8 R. D. 223.

<sup>10</sup> *Brij Behari v. Ganga*, 12 Rev. and Cr. L. J. 172=1926 R. C. 211=VII U. D. 231=10 R. D. 484.

<sup>11</sup> *Daula Koer v. Rameshwar Singh*, XII U. D. 96=15 R. D. 407.

<sup>12</sup> *Brij Mohan Lal v. Munnu*, XV U. D. 307=15 L. R. Rev. 538.

Where leave is refused the petition for leave should be dismissed, and the suit tried. The suit itself should not be disposed at this stage.<sup>1</sup>

Where a previous suit is compromised and dismissed on tenant agreeing to pay an enhanced rent, a fresh suit is not barred.<sup>2</sup>

Plaintiff may withdraw his suit for ejectment on account of an adjustment between the parties.<sup>3</sup>

If parties compromise in appeal, the appellate court ought to record it and pass a decree in terms of it.<sup>4</sup>

O. 26 applies and the report of a Commissioner appointed in a suit for profits to ascertain the amount of actual collection is admissible evidence.<sup>5</sup>

The Court may appoint a Commissioner of its own motion<sup>6</sup>; it may appoint a Commissioner to ascertain by local enquiry whether a plot in suit in an ejectment case is sublet.<sup>7</sup>

A commission to make a local investigation can be issued under O. 26, rr. 9, 10, but the Commissioner so appointed cannot delegate his authority to another.<sup>8</sup>

Local enquiry commissions are governed by O. 26, rr. 9, 10. If the court is dissatisfied with the report, it can order a further enquiry but cannot ignore the proceedings.<sup>9</sup>

The report is not evidence unless it is verified in court by the Commissioner.<sup>10</sup>

O. 32, r. 3 is mandatory and it is the court's duty to appoint a guardian to a minor shown to it to be such.<sup>11</sup>

<sup>1</sup> *Abdullah Haji Shaikh v. Kauleshar*, 14 L. R. Rev. 685=XIV U. D. 355.

<sup>2</sup> *Jokhai v. Ali Sabir Husain*, 9 L. R. Rev. 189=VIII U. D. 21=11 R. D. 123; *Mukhai v. Durga Narain Singh*, 8 L. R. Rev. 257=VIII U. D. 138=1927 R. C. 290=11 R. D. 631; *Khushal v. Raghu Nandan*, 8 L. R. Rev. 245=VIII U. D. 61=1927 R. C. 278 (one plot not claimed in second suit, immaterial); *Mahangu v. Kesari*, 8 L. R. Rev. 347=VIII U. D. 116=1927 R. C. 414 (second suit after success in correction case); *Labajan v. Mukund Lal*, XI U. D. 180.

<sup>3</sup> *Bakhtawar Lal v. Sheo Prasad*, 39 All. 694=15 A. L. J. 766=4 R. and Cr. L. J. 13.

<sup>4</sup> *Muh. Naim v. Chummi*, 15 L. R. Rev. 14=XV U. D. 45.

<sup>5</sup> *Raghu Nath v. Dwarka*, XV U. D. 265.

<sup>6</sup> *Nanhu v. Abdul Samad*, V U. D. 292=4 L. R. Rev. 81=1922 R. C. 437=7 R. D. 489.

<sup>7</sup> *Ziaul Haq v. Muh. Karim Uddin*, 5 L. R. Rev. 62=1923 R. C. 301=V U. D. 25=8 R. D. 244.

<sup>8</sup> *Bhigai v. Asmat Ullah Khan*, II U. D. 321=3 R. D. 230; *Gauri Shankar v. Laraites*, II U. D. 21=4 R. D. 492.

<sup>9</sup> *Daulat v. Nazim Husain*, XI U. D. 157=11 L. R. Rev. 291=14 R. D. 548.

<sup>10</sup> *Narsingh v. Heera*, XVI U. D. 383.

<sup>11</sup> *Ram Rao Krishna Jatar v. Jhagrao*, IV U. D. 486=2 L. R. Rev. 180=7 R. and Cr. L. J. 301=5 R. D. 259.

R. 3 does not apply to the mere service of notices but only to the institution of suits.<sup>1</sup>

O. 32, r. 3 applies to Revenue Court proceedings; hence a formal application for the appointment of a guardian to a minor defendant is necessary; failure in this respect is an irregularity, but the minor cannot get the decree passed set aside on that ground alone; he must show that he was really prejudiced by the decree or order.<sup>2</sup>

Where no notice of an application for ejectment was issued to the proposed guardian of a minor, as required by O. 32, r. 3(4) and the guardian not having paid in the arrears, ejectment was ordered, it was cancelled.<sup>3</sup>

Ordinarily Revenue Courts accept the natural guardian of a minor as his guardian *ad litem*, and do not insist on action under O. 32, r. 3(4); but if the suit is being compromised by an agreement which has the effect of giving up valuable rights of the minor, under O. 32, r. 7 no such agreement shall be made without leave of the court recorded in the proceedings.<sup>4</sup>

A compromise without leave is voidable by the minor in a proper suit or proceeding; and if the compromise is not embodied in the decree, the decree cannot be objected to when being executed, without a proper suit or proceeding being brought to avoid it.<sup>5</sup>

Where on a suit on behalf of a minor by his mother being dismissed, an appeal was filed in contravention of O. 32, r. 8, through another person as guardian, without any objection and was decreed, the matter was in second appeal considered to be a trivial irregularity.<sup>6</sup>

A receiver under O. 40, r. 1, may be appointed.<sup>7</sup>

*Ex parte* decrees are appealable under section 96, Civil Procedure Code.

A party accepting damages awarded by court for restoring a case disposed of for default is not estopped from his right of appeal.<sup>8</sup>

Under O. 41, r. 1, where an appeal is filed with a copy of the decree only, a copy of the judgment not being ready, the court should accept appeal and allow time for filing the judgment, and if necessary act under section 5, Limitation Act.<sup>9</sup> An appeal without a copy of the

<sup>1</sup> *Muh. Amin v. Sheo Harakh Singh*, 15 L. R. Rev. 8—XV U. D. 36.

<sup>2</sup> *Madho Singh v. Keshab Deo*, 1931 A. L. R. All. 656—13 L. R. Rev. 3.

<sup>3</sup> *Nathu v. Shakir*, XI U. D. 148—14 R. D. 495.

<sup>4</sup> *Bhagwan Kahar v. Kamta*, XIII U. D. 154—14 L. R. Rev. 69.

<sup>5</sup> *Sukhdeo v. Ram Prit*, XIV U. D. 251—14 L. R. Rev. 513.

<sup>6</sup> *Bhola Ram v. Munshi Lal*, XI U. D. 4.

<sup>7</sup> *Ganga Dei v. Behari Lal*, IV U. D. 214—1 L. R. Rev. 196—6 R. D. 414.

<sup>8</sup> *Kanhaya Lal v. Sumar*, XVI U. D. 560.

<sup>9</sup> *Mulchand v. Gur Buxh*, XI U. D. 128.

decree is not entertainable.<sup>1</sup> So an appeal without a copy of the judgment.<sup>2</sup> Even in connected appeals from suits in which only one judgment was delivered copy of decree must be filed in each ; the court cannot dispense with it.<sup>3</sup>

Where a memorandum of appeal is defective for any reason, *e. g.*, deficiency in court-fees or the not filing of the necessary documents, the court must fix a day for removing the defect, and then dismiss it if the defect is not removed by them.<sup>4</sup>

A court of appeal has no jurisdiction to set up a new case on behalf of the plaintiff.<sup>5</sup>

An appellate court cannot be allowed to decide a case on a plea not raised before it or in the court of first instance.<sup>6</sup> A point that could have been raised by way of cross-objection before the first appellate court but was not raised cannot be raised in second appeal.<sup>7</sup>

O. 41, r. 4 applies.<sup>8</sup>

A Court is not justified in setting up a case for the parties which they never set up for themselves.<sup>9</sup>

If some of the appellants die, the appeal abates as regards them, but if the ground of appeal is common to all, the surviving appellants may carry on the appeal.<sup>10</sup>

Where a decree for ejectment is passed against several subtenants, and is reversed on the appeal of one of them, the tenant-in-chief in second appeal ought to file it against all the subtenants, and not only against the appellant in the first appeal, or his appeal will be futile.<sup>11</sup>

A and his brother sued certain persons in ejectment. The brother died and his sons were not brought on the record. The suit was dismissed. Really it had abated under O. 22, r. 3. If A wishes to appeal, he should make his brother's sons *pro forma* respondents or indicate that he is appealing also on their behalf.<sup>12</sup>

The appellant should provide the correct address or change of address of the respondent.<sup>13</sup>

<sup>1</sup> *Zalim Singh v. Ganga Charan*, 14 L. R. Rev. 848—XIV U. D. 60.

<sup>2</sup> *Ram Kishun v. Lallan*, 14 L. R. Rev. 879—XIV U. D. 533.

<sup>3</sup> *Jafar v. Thakur Ram Pal Singh*, 1940 R. D. 97.

<sup>4</sup> *Chandika v. Nasir Hasan Khan*, XIX U. D. 91—1938 R. D. 179.

<sup>5</sup> *Sharafatullah v. Noor Muhammad*, XX U. D. 45—1938 R. D. 746.

<sup>6</sup> *Bish Nath Prasad Singh v. Bhola*, III U. D. 174—4 R. D. 10 ; *Brij Kishore v. Abdul Rahman*, 14 L. R. Rev. 627—XIV U. D. 322.

<sup>7</sup> *Ram Tapasa v. Brij Kumar*, XVI U. D. 67.

<sup>8</sup> *Beni v. Sri Thakurji Maharaj*, 12 R. and Cr. L. J. 4—VI U. D. 474 ; *Bodhainyan v. Gyan Gir*, XI U. D. 225 ; *Sarbati v. Zaminpal*, XIV U. D. (H. C.) 97—14 L. R. Rev. 389.

<sup>9</sup> *Mathura Ram v. Jan Khan*, XX U. D. 120—1938 R. D. 85.

<sup>10</sup> *Rachpal Singh v. Bhagwant*, XII U. D. 273—15 R. D. 629.

<sup>11</sup> *Bodhainyan v. Gyan Gir*, XI U. D. 225.

<sup>12</sup> *Maganjan v. Ram Naresh*, XI U. D. 216.

<sup>13</sup> *Piyare Lal v. Sri Thakur Rangji*, XVII U. D. 318—1936 R. D. 448.

Where an appellant is not served though his pleader is informed and states that he has no instructions, the appeal should not be dismissed.<sup>1</sup>

Section 141 U. P. C. extends O. 9, r. 9 (and so Order 41, rule 19) to an application to restore an application dismissed for default<sup>2</sup> made to restore a suit dismissed for default.

Under O. 41, r. 20, a person who was party in the trial court may be joined as a respondent although the appeal against him has become time-barred,<sup>3</sup> but the court is not bound to join him,<sup>4</sup> specially if appellant has been grossly negligent in not impleading him.<sup>5</sup>

Where the appellant is not properly served although his pleader is informed of the date of hearing, and the pleader alone appears on that date but states that he has not been instructed, the appeal should not be dismissed for default.<sup>6</sup>

Where in preparing a decree of the trial court the *ahlmad*, by mistake, omitted the zamindar's name, and this omission was not noticed in the appeal filed from the decree, the zamindar may be impleaded as a party in second appeal.<sup>7</sup>

No limitation applies to a party impleaded under O. 41, r. 20.<sup>8</sup>

If a zamindar is impleaded in the trial court in a suit for declaration of plaintiff's right of occupancy, and on its being dismissed is not impleaded in the Court of first appeal, the decision becomes final so far as he is concerned; and the plaintiff cannot implead him in second appeal.<sup>9</sup>

O. 41, r. 20 is permissive. The court is not bound to implead a necessary party against whom an appeal is time-barred.<sup>10</sup> The appellate court may add a party whose name has been omitted from the appeal.<sup>11</sup> But it has no power to add a party who was not one before the trial court.<sup>12</sup>

<sup>1</sup> *Sukh Mangal v. Raunak Bibi*, I U. D. 284—30 I. C. 199

<sup>2</sup> *Tasadduk Husain v. Bhagwan Baks*, 5 L. R. Rev. (O.) 89—VI U. D. 114—1923 R. C. 609—1 O. W. N. 109—11 O. L. J. 232—8 R. D. 152.

<sup>3</sup> *Tika v. Kunji Lal*, 9 L. R. Rev. 298—IX U. D. 141; *Gulab v. Bansidhar*, 15 L. R. Rev. 95—XV U. D. 171; *Inayat Khan v. Said Muhammad*, IX U. D. 110; *Jeot v. Mahant*, XII U. D. 109.

<sup>4</sup> *Raj Nath v. Gopal Buz*, X U. D. 216.

<sup>5</sup> *Mohit v. Nathe*, XVII U. D. 316—1936 R. D. 450.

<sup>6</sup> *Sukh Mangal v. Raunak Bibi*, I U. D. 284—30 I. C. 199—2 O. L. J. 198.

<sup>7</sup> *Shukurullah v. Abdul Rahman*, XX U. D. 238—1939 R. D. 270.

<sup>8</sup> *Bechai Pandey v. Ori*, VIII U. D. 79—8 L. R. Rev. 311—1927 R. C. 356—11 R. D. 493; *Inayat Khan v. Said Muhammad*, IX U. D. 110—9 L. R. Rev. 227—13 R. D. 446; *Tika v. Kunji Lal*, IX U. D. 141—9 L. R. Rev. 298—12 R. D. 659.

<sup>9</sup> *Tilak Dhari v. Goga*, XI U. D. 105—14 R. D. 430.

<sup>10</sup> *Raj Nath v. Gopal Buz*, X U. D. 216—14 R. D. 88.

<sup>11</sup> *Gulab v. Bansidhar*, XV U. D. 171—15 L. R. Rev. 95.

<sup>12</sup> *Baldeo v. Har Dayal*, VII U. D. 207—7 L. R. Rev. 350—9 L. R. Rev. 197—1926 R. C. 433—10 R. and Cr. L. J. 263—1927 R. C. 206—10 R. D. 236.

Where the trial court decree omits a person's name by mistake and he is on that account not impleaded in the appeal, the court should act under O. 41, r. 20 and implead him.<sup>1</sup>

In an ejectment suit by an occupancy tenant against alleged subtenants, which was dismissed, the Commissioner on appeal remanded the case in order to implead the landholders who were no parties to the suit. The trial court did so, and ordered ejectment. The defendants appealed, omitting by mistake to make the landholders parties to the appeal, and on this ground the appeal was dismissed by the Commissioner. It was held that the landholders were not really interested, and the Commissioner exercised his discretion, and that under O. 41, r. 20, the landholders could be added.<sup>2</sup>

The question in dispute was whether a plot of land was *khudkasht* of two landholders or statutory of the tenant. The trial court found the latter and one of the two landholders appealed with success. The tenant filed a second appeal without impleading the other landholder. It was held that it may be properly inferred that he was not interested and therefore not a necessary party, and that being so he could be added under O. 41, r. 20.<sup>3</sup>

Where notice on respondent had not been duly served, the court must re-hear the appeal under O. 41, r. 21.<sup>4</sup>

O. 41, r. 22, does not permit a respondent, defendant in the court below, to raise cross-objection which, if allowed, would affect the decree in plaintiff-respondent's favour.<sup>5</sup>

Cross-objections against appellant by one of the respondents was held to be properly filed.<sup>6</sup>

Where notice of appeal has been served by affixation and it is not certain when respondent had actual notice of it, a cross-objection filed by him within 4 or 5 days after the expiration of 30 days should be accepted as in time.<sup>7</sup>

Under O. 41, r. 23, a case can be remanded only when the first court has decided it on a preliminary point. If fresh evidence is needed, r. 25 may be resorted to.<sup>8</sup>

An appellate court is not bound to remand.<sup>9</sup>

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<sup>1</sup> *Dhaukul Singh v. Bachi*, IV U. D. 515=5 L. R. Rev. 220=8 R. and Cr. L. J. 49=5 R. D. 285; *Maharaja of Vizianagram v. Ram Rekha Singh*, 14 L. R. Rev. 802=XIV U. D. 490.

<sup>2</sup> *Kishan Chamaria v. Somaria*, 12 L. R. Rev. 96=15 R. D. 291.

<sup>3</sup> *Jeot v. Mahant*, 12 L. R. Rev. 86=XII U. D. 109=15 R. D. 286.

<sup>4</sup> *Kharak Singh v. Ram Chander*, 14 L. R. Rev. 688=XIV U. D. 358.

<sup>5</sup> *Jwala Prasad v. Phul Singh*, III U. D. 297=4 R. D. 119.

<sup>6</sup> *Radha Dei v. Phulwari*, V C. D. 414.

<sup>7</sup> *Balkishore Singh v. Rahtmullah*, 15 L. R. Rev. 69.

<sup>8</sup> *Muh. Abdul Majid Khan v. Ali Hasan Khan*, VIII U. D. 89.

<sup>9</sup> *Muh. Abdul Jalil Khan v. Puran*, V U. D. 453=4 L. R. Rev. 218=1923 R. O. 153=7 R. D. 251.

Omission to fix a time under rule 26 for filing objections is a mere irregularity.<sup>1</sup>

Court may act under O 41, r. 27 (b).<sup>2</sup> Omission to give reasons for admitting additional evidence is not fatal to the admission.<sup>3</sup>

Omission to state reasons in the order may under circumstances be a technical defect not affecting the merits.<sup>4</sup> Powers under the rule must be sparingly used, and there is no appeal from an order of refusal.<sup>5</sup> If additional evidence is admitted the opposite party should be given an opportunity to rebut it.<sup>6</sup>

After the admission of an appeal under Order 41, rule 12, the judgment dismissing it must comply with Order 41, rule 31.<sup>7</sup> See *Achhaibar v. Sheo Prasad*,<sup>8</sup> for another case in which rule 31 was applied.

An appellate court should not reverse a judgment based on veracity of witnesses believed by the trial court unless very strong grounds exist for holding that the latter went wrong in drawing the correct inference from the demeanour and evidence of the witnesses.<sup>9</sup>

Order 41, rule 33, must be read with rule 22, and the amount of a decree cannot be reduced if defendant-respondent filed no cross-objection as to it.<sup>10</sup> Under the rule no decision can be given against a person impleaded in the trial court but not in the appeal.<sup>11</sup>

Appellate court may under rule 33 make any order which the case may require whether any party has filed an appeal or not.<sup>12</sup>

If a person sued under section 180 is found in appeal not to be a trespasser, the Court of appeal may order his ejectment as a non-occupancy tenant under section 175 read with section 179.<sup>13</sup>

<sup>1</sup> *Suraj Bali v. Dan Bahadur Singh*, I U. D. 240

<sup>2</sup> *Mulai Khan v. Sheo Dan Singh*, V U. D. 452—4 L. R. Rev. 217—1923 R. C. 291—9 R. and Cr. L. J. 235—7 R. D. 160.

<sup>3</sup> *Shadi v. Nand Lal*, XIV U. D. 467—14 L. R. Rev. 366.

<sup>4</sup> *Surjan v. Achhaibar*, V U. D. 429—4 L. R. Rev. 187—1923 R. C. 50—7 R. D. 247 ; *Sharli v. Nand Lal*, XIV U. D. 457—14 L. R. Rev. 365.

<sup>5</sup> *Mahesh Narain Singh v. Rafiunnissa*, XV U. D. 538—16 L. R. Rev. 135.

<sup>6</sup> *Nar Singh v. Heera*, XVI U. D. 383.

<sup>7</sup> *Chunni Agrahari v. Mub. Naam*, XII U. D. 136—15 R. D. 563.

<sup>8</sup> 1939 A. L. J. (B. R.) 61—XX U. D. 205—1939 R. D. 216.

<sup>9</sup> *Achhaibar v. Sheo Prasad*, 1939 A. L. J. (B. R.) 61—XX U. D. 205.

<sup>10</sup> *Narain Das v. Hira*, IV U. D. 470—2 L. R. Rev. 186—7 R. and Cr. L. J. 289—5 R. D. 249.

<sup>11</sup> *Mahabir Singh v. Baj Nath Singh*, XX U. D. 296—1939 R. D. 8.

<sup>12</sup> *Maharaja of Vizianagram v. Ram Rekha Singh*, 14 L. R. Rev. 802—XIV U. D. 490 ; so in *Balkishore Singh v. Rahimullah*, 15 L. R. Rev. 69—XV U. D. 260.

<sup>13</sup> *Bhagwan Din v. Beni Prasad*, XV U. D. 459—16 L. R. Rev. 26.

Court may under rule 33 record a compromise and give a decree in terms of it.<sup>1</sup>

A suit for profits was decreed partly against *M* and partly against *N*. *N* appealed. The plaintiff filed no cross-objection and *M* was not impleaded. The High Court held that on a finding that *M* was not liable at all and that *N* was liable for the whole claim, a decree for the whole amount could be properly passed against *N*, and *M*, though not a party to the appeal, could be exempted altogether.<sup>2</sup>

*R* sued *D* as tenant, for a declaration that the rent was Rs. 100 and not Rs. 50. *T* intervened, claiming to be the tenant (and not *D*) at Rs. 100. The first court finding in favour of *D* dismissed the suit. If the appellate court finds that *T* was the tenant at Rs. 100 it can decree the suit although *T* had not appealed from the trial court's decision.<sup>3</sup>

Orders 41 and 42 were applied in Oudh.<sup>4</sup>

Section 243 does not make inapplicable the Insolvency Act to proceedings under the Tenancy Act, as section 193 of Act II of 1901 did. The Insolvency Act therefore applies to proceedings under the Tenancy Act; and an attachment and sale of a property in execution of a decree for arrears of rent are invalid as against the receiver of the estate of the tenant, who was declared an insolvent before the attachment.<sup>5</sup>

**244.** In any suit brought under section 180, section 183 or Chapter IX, or in deciding an application under section 175, which is treated as a suit under the provisions of section 179, the court may, on the application of the plaintiff and after framing the necessary issues, grant any relief which the court is competent to grant, and to which it may find the plaintiff entitled, notwithstanding that such relief may not have been asked for in the plaint:

Provided that, after framing such issues the court shall, on the request of either party, grant reasonable time for the production of evidence.

1. This in effect corresponds to, but is wider in scope than, section 192 of the Act of 1926.

<sup>1</sup> *Muh. Naim v. Chunni*, 15 L. R. Rev. 14—XV U. D. 45.

<sup>2</sup> *Jawahar Buz v. Shujaat Husain*, 43 All. 85—18 A. L. J. 925—1921 A. I. R. All. 367—IV U. D. 802—58 I. C. 114—2 U. P. L. R. 309—6 R. D. 386.

<sup>3</sup> *Devi Singh v. Raj Bahadur*, 14 L. R. Rev. 675—XIV U. D. 349.

<sup>4</sup> *Muh. Abul Hasan Khan v. Raj Kumari*, 11 U. D. 382; *Rafi Uddin Ahmad v. Bechu*, I U. D. 264.

<sup>5</sup> *Official Receiver v. Murtaza Ali*, 54 All. 616—1932 A. L. J. 402—1932 A. I. R. All. 434—XIII U. D. (H. C.) 104—13 L. R. Rev. 332.



2. The court is at liberty to grant adequate relief though not asked for in the plaint, after framing necessary issues and taking evidence tendered by the parties, *e. g.*, in a suit framed as under section 180 relief may be granted under section 195.<sup>1</sup> The section applies only to the relief in regard to which issues have been framed.<sup>2</sup> Where in a suit under section 180 no relief as to fixation of rent is asked for, but is prayed for subsequently in appeal, it should not be granted in the absence of sufficient material to fix the rent.<sup>3</sup>

**245.** (1) The lambardar in an undivided mahal or in the common land of a mahal, thok or patti of Powers of lambardar. which he is the lambardar, is entitled, in the absence of any contract or usage to the contrary, to collect rents and other dues.

(2) Wherever the lambardar is entitled under the provisions of sub-section (1) to collect rents, he shall also be entitled to settle and eject tenants, to eject rent-free grantees, or grantees at a favourable rate of rent, to enhance rents, and to do all acts incidental to the proper management of the estate with a view to the common benefit :

Provided that a lambardar shall not be entitled on behalf of other co-sharers without their written consent to—

- (a) grant a theka ;
- (b) sell or cut down trees or groves ;
- (c) grant permission to erect buildings on the holding of a tenant.

1. This corresponds to section 265 of the Agra Act of 1926. Cf. section 126 of the Oudh Act.

The powers mentioned in sub-section (2) can be exercised only by a lambardar who is entitled to collect rents under the provisions of sub-section (1), *i. e.*, in the absence of a contract or usage against his power to collect rents.

*Undivided mahal.*—Does sub-section (1) include a mahal divided into *pattis* by metes and bounds either privately or through the Revenue Court ?

2. A lambardar is now declared to have the right :—

- (a) To collect rents and other dues, in the absence of a contract or usage to the contrary, which must be proved by anybody setting it up. Such special contract was held to be proved

<sup>1</sup> *Ram Chandar v. Nihal Singh*, XII U. D. 117—15 R. D. 383

<sup>2</sup> *Deo Narain Singh v. Jang Bahadur*, X U. D. 54—10 L. R. Rev. 254—13 R. D. 452.

<sup>3</sup> *Fatima v. Sirajuddin*, XVII U. D. 49—1936 R. D. 85.

in *Siddique Ali v Chanda*.<sup>1</sup> This renders obsolete Rule 18 (aa) of B. C. 8 -III and the rulings of the Board based thereon,<sup>2</sup> and adopts the High Court view.<sup>3</sup> The fact that a co-sharer has received rents brought to him does not disprove the custom or contract.<sup>4</sup>

A lambardar may collect the rent of *shamilat* lands, but is not entitled to interfere with the collection of rent by a co-sharer in his own exclusive *patti*,<sup>5</sup> and cannot sue a tenant of that *patti* for arrears of rent.<sup>6</sup>

Where in a *patti* owned by several co-sharers some are in possession of lands in severalty, they may collect the rent thereof, but the lambardar is entitled to collect in respect of the rest.<sup>7</sup>

Plaintiff sued for arrears of rent as managing member of the family and as lambardar and impleaded some of the co-sharers as party defendants. There was no specific denial of plaintiff's status as lambardar or manager, and the co-sharers did not contest the plaintiff's right to sue. It was held that the plea of non-joinder cannot be given effect to, and that plaintiff was entitled to a decree for the entire rent, and not in respect of his own share only.<sup>8</sup>

Where the right of collection is in the lambardar, and not in the Karta of the joint Hindu family of which the lambardar is a member, disruption of the family does not take away the right of the lambardar to sue for ejectment.<sup>9</sup>

<sup>1</sup> 6 L. R. Rev. 45—5 L. R. Rev. 271—11 Rev. and Cr. L. J. 85—80 I. C. 732—VI U. D. (H. C.) 267, 436—1924 R. C. 400—9 R. D. 281

<sup>2</sup> *Hanuman Singh v Ahmad Ali Khan*, B. R. 6 of 1922—V U. D. lxxvii—3 L. R. Rev. 369—1922 R. C. 205—4 U. P. L. R. 106—8 R. and Cr. L. J. 226; *Bhala Nath v. Babu Ram*, V U. D. 181—3 L. R. Rev. 457—1922 R. C. 384—9 R. and Cr. L. J. 32—6 R. D. 166; *Jhamman v Bhuni*, B. R. 2 of 1910; *Sahni v Allah Bakh*, I U. D. 22—29 I. C. 35; *Kunhai Lal v Gauri Shankar*, 6 L. R. Rev. 31—VI U. D. 357—1925 R. C. 48; *Achhaibar Singh v. Ram Harakh*, VI U. D. 309—5 L. R. Rev. Oudh 199.

<sup>3</sup> *Gulzar Mal v. Jai Ram*, 36 All. 441—12 A. L. J. 606—24 I. C. 178; *Mahabir Prasad v. Ram Tawakkul*, 28 I. C. 838; *Muhammad Abdullah Khan v. Kundan*, 6 L. R. Rev. 118—11 Rev. and Cr. L. J. 155—VI U. D. (H. C.) 445—1925 R. C. 161—89 I. C. 197—9 R. D. 279.

<sup>4</sup> *Ballabh Das v. Mahipal Singh*, XVIII U. D. 144—1937 R. D. 177, see also *Maya Sahai v. Lalta Prasad*, IX U. D. 36.

<sup>5</sup> *Khan Ali Khan v. Masihulaman Khan*, 1931 A. L. J. 1068—1932 A. I. R. All. 152—134 I. C. 455—16 R. D. 22.

<sup>6</sup> *Sunder Lal v. Subedar Singh*, 1932 A. L. J. 507—1932 A. I. R. All. 416—16 R. D. 403; *Sahdeo v. Ram Saran*, XX U. D. 40—1938 R. D. 742.

<sup>7</sup> *Muhammad Hadiyar Khan v. Umar Das Khan*, 1937 A. L. J. 788—1937 R. D. 347.

<sup>8</sup> *Parmesar Narain v. Babooni Narain*, 10 L. R. Rev. 323—XI U. D. 22—13 R. D. 846.

<sup>9</sup> *Sohan v. Chitrangji*, 8 L. R. Rev. 190—1927 R. C. 193—VII U. D. 143—10 R. D. 232.

- (b) To settle tenants. He can grant a lease if it is in the proper management of the estate with a view to the common benefit, but not of land in a *patti* which is the exclusive property of another.<sup>1</sup>
- (c) To eject tenants.<sup>2</sup> He can sue to eject a trespasser by demolition of a house in the *abadi* although he may not have any interest in any land within the ambit of the village.<sup>3</sup> See also the cases cited in the footnote.<sup>4</sup> Ejection of a trespasser let in by an unauthorised person is an act incidental to the proper management of the estate with a view to the common benefit.<sup>5</sup>

The lambardar alone may sue to eject a tenant,<sup>6</sup> even though other co-sharers also make collections.<sup>7</sup>

- (d) To eject rent-free grantees, or grantees at favourable rates of rent. So held in *Deepa v. Udai*.<sup>8</sup>
- (e) To enhance rents ;
- (f) To do all acts incidental to the proper management of the estate with a view to the common benefit. The test of a lambardar's power to act for his co-sharer is contained in these words.

In Oudh it was held that a lambardar alone had no power to commute rents.<sup>9</sup>

The restriction as to the right to grant a *theka* or to sell or cut down trees or groves, should be noted.

An agreement for the sake of good management between a lambardar and the purchaser of a part from him that the latter should collect the rents of his share separately, while he should collect the rents

<sup>1</sup> This was also the view in Oudh, *Farid Uddin Ahmad v. Har Din*, XIV U. D. 66—14 L. R. Rev. 126.

<sup>2</sup> *Bakht Bahadur v. Baldeo*, XVII U. D. 310—1936 R. D. 455 ; *Daulat Singh v. Sundar*, XIX U. D. 120—1938 R. D. 247.

<sup>3</sup> *Shakur v. Sanwal Das*, 1930 A. I. R. All. 630—XI U. D. (H. C.) 249—11 L. R. Rev. 204—14 R. D. 425.

<sup>4</sup> *Gujraj Singh v. Uday Pratap Narain Singh*, I U. D. 1—29 I. C. 297 ; *Sobha Ram v. Banwari Lal*, III U. D. 101—5 R. D. 509 ; *Sheo Das v. Ram Shankar*, III U. D. 151—5 R. D. 548 ; *Gulzari Mal v. Jai Ram*, 36 All. 441—12 A. L. J. 608.

<sup>5</sup> *Sultan Singh v. Ram Singh*, XV U. D. 245—15 L. R. Rev. 408.

<sup>6</sup> *Farid Uddin Ahmad Khan v. Har Din Murao*, 14 L. R. Rev. 126—XIV U. D. 66 ; *Muh Sher Khan v. Ram Charan*, VII U. D. 411—6 L. R. Rev. 66—1925 R. C. 221—8 R. D. 308.

<sup>7</sup> *Maya Sahai v. Lalta Prasad*, IX U. D. 36—10 L. R. Rev. 240—12 R. D. 188, see, however, *Hanuman Singh v. Ahmad Ali*, B. R. 6 of 1922—3 L. R. Rev. 369.

<sup>8</sup> B. R. 6 of 1903.

<sup>9</sup> *Bisram Singh v. Danna*, 1929 A. I. R. Oudh 459—113 I. C. 794—12 R. D. 683.

of the remaining share, if acted upon, is valid and binding upon the parties<sup>1</sup>

3. A lambardar is not the agent of the co-sharers.<sup>2</sup> He cannot sell the share of his co-sharers to pay off debts due from them, nor can he mortgage the mahal to raise money for the payment of land revenue due in respect of it.<sup>3</sup>

He has no general powers to grant any lease of co-parcenary land beyond what the circumstances of the case may require.<sup>4</sup> The validity of a lease granted by a lambardar depends upon whether the circumstances of the case required it and whether it is for the benefit of the co-sharers whom he represents. For instance, a lease of coparcenary land for seven years was set aside when there was nothing to show that the exigencies of the season or time required it.<sup>5</sup> Whereas a lease for ten years was upheld.<sup>6</sup> In the case last cited, the lambardar ejected an occupancy tenant whose rent was 148 rupees but which was never paid, and granted a lease for ten years, at 120 rupees a year, the lessees covenanting to construct on the property a *pucca* well at a cost of Rs. 300 which, at the termination of the lease, was to become the property of the co-sharers. It was found on the evidence that the land was of inferior quality and did not contain any *pucca* well for purposes of irrigation, and that no one would have accepted the lease if it had been granted for a period of less than ten years, and therefore the land would not have yielded any profit to the co-sharers. Upon these findings, Strachey, C. J. and Banerji, J. held that the lease was within the lambardar's authority. Their Lordships relied upon the unreported case of *Roshan Lal v. Muhammad Fazal Husain Khan*,<sup>7</sup> where a lease of ten years for reclaiming *banjar* land was upheld.

In *Muhammad Kazim v. Miyan Khan*,<sup>8</sup> Knox, J. upheld a lease for 7 years granted by a lambardar, three years before his retirement, of inferior land at a favourable rent. The suit to set it aside was brought by his successor who, while a mere co-sharer, must have for three years received profits arising out of the very lease. In *Jagan Nath v. Hardayal*,<sup>9</sup> in which a perpetual lease granted by a lambardar was set

<sup>1</sup> *Sheo Pal Singh v. Ayaz Fatma*, 1932 A. L. J. 1029=1933 A. I. R. All. 91=XIV U. D. (H. C.) 3=13 L. R. Rev. 402=16 R. D. 583

<sup>2</sup> *Musai Singh v. Mathura*, V U D. 171=8 Rev. and Cr. L. J. 303=1922 R. O. 497; *Jit Bahadur v. Chandra Pal Singh*, X U. D. (H. C.) 79. 178=IX U. D. (H. C.) 217=10 L. R. Rev. 208=5 O. W. N. 693=111 I. C. 834=12 R. D. 866.

<sup>3</sup> *Bhajan Lal v. Moti*, 3 All. 177.

<sup>4</sup> *Jagan Nath v. Hardayal*, 17 A. W. N. 207; *Bansidhar v. Dip Singh*, 20 All. 438=18 A. W. N. 103; *Mu. Noor Khan v. Bande Ali*, 16 L. R. Rev. 165=X U. D. (H. C.) 123.

<sup>5</sup> *Chattray v. Nawala*, 29 All. 20=26 A. W. N. 257=3 A. L. J. 639.

<sup>6</sup> *Mukta Prasad v. Kamta Singh*, 26 A. W. N. 277=3 A. L. J. 655.

<sup>7</sup> II U. D. 748.

<sup>8</sup> 29 All. 554=4 A. L. J. 538=27 A. W. N. 165.

<sup>9</sup> 17 A. W. N. 207.

aside at the instance of his co-sharers, Edge, C. J. and Blair, J. observed : "So far as we are aware, a lambardar has no general power to grant any lease of coparcenary land beyond such term as the circumstances of the particular year or particular season may require. In order to have the coparcenary land cultivated, to obtain the benefit therefrom for the coparcenary body, it is reasonable that the lambardar should have power, unless it is expressly withheld from him, to make a temporary letting of the coparcenary land." The whole of this passage was cited by Stanley, C. J. and Knox, J. with approval in *Chattray v. Nawala*,<sup>1</sup> the concluding portion of whose judgment, "nor is there anything to show that the exigencies of the season or time when the impeached lease was granted required that the grant should be made for so long a time as seven years," shows that the expression in the judgment of Edge, C. J. and Blair, J. "beyond such term as the circumstances of the particular year or particular season may require" is not to be taken too literally and that a lease for a term of seven or more years is not necessarily bad. Strachey, C. J. cited the last sentence of the passage from *Jagan Nath v. Har Dayal*, quoted above and observed "that seems to apply fully to a lease for ten years executed by a lambardar under the circumstances found to exist in this case," and proceeded to add that "the observation in the preceding sentence of the judgment in that case which seems to suggest that the lambardar's power to lease coparcenary land is limited to the requirements of a 'particular year or particular season,' was not necessary for the decision, and it must, I think, be taken as qualified to some extent by the following sentence which without limitation to the requirement of a particular year or season expressly refers to a temporary letting which is necessary for the cultivation of coparcenary land." Banerji, J., said "that he should have had great hesitation in accepting the limitation as to the particular year or season." In *Bansidhar v. Dip Singh*<sup>2</sup> a lease for ten years of land producing valuable *munj* grass at an inadequate rent, and made with the object not of cultivating the coparcenary land but of damnifying a successful opponent of the lessor in a certain partition proceeding was cancelled as beyond the lambardar's power. It may be noted that the judgment in *Chattray v. Nawala* is very unsatisfactory, inasmuch as it does not set out the full facts of the case and the circumstances under which the lease was granted. In *Umrao Singh v. Umrao Singh*,<sup>3</sup> these propositions were reaffirmed, but it was ruled that if the lease is beneficial to the general body of proprietors they cannot avoid it.

The Board of Revenue has taken the same view. A lambardar is bound to manage the property in the interest of the co-sharers exercising the same ordinary prudence as if the property were his own. Hence in the absence of evidence of fraud, collusion or unreasonableness, a twenty years' lease was upheld when it had been acquiesced in by the co-sharers for 16 years.<sup>4</sup> But without authority of all the co-sharers a lambardar

<sup>1</sup> 29 All. 20—26 A. W. N. 257—3 A. L. J. 639.

<sup>2</sup> 20 All. 438—18 A. W. N. 103

<sup>3</sup> 25 I. C. 61.

<sup>4</sup> *Kanis Fatima v. Sheoraj Singh*, IV U. D 679—3 L. R. Rev. 166—5 R. D. 83.

cannot grant a lease for a longer term (in this case 90 years) than the agricultural exigencies warrant<sup>1</sup> So a lambardar cannot, acting against the interest of co-sharers who were about to come into possession of their lots, for his own benefit, grant a new lease for inadequate enhancement.<sup>2</sup>

In Oudh, a lambardar was held empowered to grant a lease for the benefit of the estate or necessary for its proper management.<sup>3</sup>

In short, the power of lambardars to grant long term leases depends on the circumstances of each case.<sup>4</sup>

A lease to a relative given by the lambardar during a partition at a low rent is fraudulent and void<sup>5</sup>

A lease to a relative called from another village requires proof of genuineness.<sup>6</sup>

The co-sharer manager of a joint estate cannot grant a lease to plant a grove.<sup>7</sup>

Authority may be inferred from conduct.<sup>8</sup>

A lambardar can authorise a tenant to put up a *kutoha* house.<sup>9</sup> He cannot, in an ejectment suit, admit under-proprietary rights in the defendant.<sup>10</sup>

**246.** (1) Except as otherwise provided in sub-section (3) or in section 245, where there are two or more co-sharers in any right, title or interest all things required or permitted to be done

Suits etc. by co-sharers  
in undivided property.

<sup>1</sup> *Ram Sarup v. Debi Din*, IV U. D. 624=2 U. P. L. R. 149=4 R. D. 381 ; *Har Dial v. Alam*, 1924 A. I. R. All. 459=1923 R. C. 388=V U. D. (H. C.) 187=4 L. R. Rev. 298=74 I. C. 177=7 R. D. 79.

<sup>2</sup> *Doobru v. Hanuman*, IV U. D. 615=7 Rev. and Cr. L. J. 249=2 L. R. Rev. 141=5 R. D. 372.

<sup>3</sup> *Jit Bahadur Singh v. Chandra Pal Singh*, X U. D. (H. C.) 79.

<sup>4</sup> *Chheda Singh v. Nihal Singh*, III U. D. 524=4 R. D. 342 ; *Baldeo v. Waris Ali*, V U. D. 234=1922 R. C. 297=4 U. P. L. R. 37=7 R. D. 426. So of an agent, *Kaleshar v. Ram Bisal*, 7 L. R. Rev. 365=1926 R. C. 459=VII U. D. 243=10 R. D. 274.

<sup>5</sup> *Jagan Nath v. Gulzari Lal*, XVI U. D. 237.

<sup>6</sup> *Chandan v. Beni Ram*, XV U. D. 406.

<sup>7</sup> *Ram Dut v. Chotak*, IX U. D. 313=4 O. W. N. 109=9 L. R. Rev. 336.

<sup>8</sup> *Bhagwan Singh v. Nabi Baksh*, V U. D. 257=1922 R. C. 538=3 L. R. Rev. 526=7 R. D. 456.

<sup>9</sup> *Abdur Raoof v. Bachchoo*, 1923 A. I. R. All. 532=1923 R. C. 438=5 L. R. Rev. 33=10 Rev. and Cr. L. J. 90=VI U. D. (H. C.) 44=73 I. C. 498=8 R. D. 355.

<sup>10</sup> *Har Prasad v. Bikramajit Singh*, 8 O. L. J. 131=61 I. C. 959.

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by the possessor of the same shall be done by them conjointly, unless they have appointed an agent to act on behalf of all of them.

(2) Nothing in sub-section (1) shall affect any local usage or special contract by which a co-sharer in an undivided property is entitled to receive separately the whole or his share of the rent payable by a tenant.

(3) When one of two or more co-sharers is not entitled to sue alone and the remaining co-sharers refuse to join as plaintiffs in a suit for money recoverable by them jointly, such co-sharer may sue separately for his share, joining the remaining co-sharers as defendants.

(4) Where the tenant of a holding or the illegal transferee of such tenant is also a co-sharer in the proprietary right in such holding, nothing in this section shall require him to be joined as plaintiff in any suit or application brought or made against him as such tenant or illegal transferee under the provisions of this Act.

1. This reproduces in effect section 266 of the *Agra Act of 1926* and corresponds to section 126 of the *Oudh Act*, under which, in a *pattidari* estate only the *lambardar* or *pattidar* entitled to collect the rents of the *patti*, and in all other joint estates, or under-proprietary or other tenures, only a manager authorised to collect the rents on behalf of all the co-sharers, could sue for arrears of rent, enhancement of rent or ejection of tenants, or distrain, any local custom or special contract being left unaffected. Section 266 of the Act of 1926 corresponded to section 194 of the Act of 1901 and section 106 of the *Rent Acts*.

2. Reading section 265 and section 266 of the *Agra Act* and section 126 of the *Oudh Act*, the right to sue in respect of a common right depended upon the power to collect the rents on behalf of all the co-sharers. And this is the law under sections 245, 246 of this Act. It was held in *Oudh* that the manager referred to above must be the *lambardar* in the case of joint estate or under-proprietary tenures.<sup>1</sup> If no common manager was appointed, the co-sharers were presumed to have accepted the *lambardar* as such manager and so in *pukhtadari mahal*.<sup>2</sup>

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<sup>1</sup> *Bhan Partab v. Manohar Lal*, 18 O. C 5=2 O. L. J. 123=28 I. C. 236 ; *Sobha Ram v. Banwari Lal*, III U. D. 101, but see *Hanuman Singh v. Ahmad Ali Khan*, B. R. 6 of 1922=3 L. R. Rev. 369 ; *Nageshar Singh v. Sri Pal Singh*, 1934 [A. I. R. Oudh 189=8 Luck. 665=XIV U. D. (H. C.) 143=17 R. D. 546.

<sup>2</sup> *Muh. Raza v. Babar Ali*, B. R. 13 of 1932=XIV U. D. (B. R.) 7 ; *Busheshar Nath v. Mata Din*, X U. D. 82 ; *Sh eo Narain v. Prag*, X U. D. 111 ; *Muh. Yakub Khan v. Bhikari*, 5 O. W. N. 366=110 I. C 67=X U. D. (H. C.) 49=10 L. R. Rev. 30. Contra, *Hanuman Singh v. Ahmad Ali Khan*, B. R. 6 of 1922.

It was also held that a lambardar could, after he ceased to be such, sue to recover rent due from a *thekadar* during the period of his lambardari;<sup>1</sup> and that if there were two lambardars in a mahal a notice issued by one who admittedly collected the rents and not signed by the other who was not concerned with the particular plot, was not bad.<sup>2</sup>

A lambardar could sue for the whole rent although a part of it had been paid to a co-sharer who had no power to collect rents.<sup>3</sup>

One of two lambardars of an undivided mahal may sue a tenant for arrears of rent.<sup>4</sup>

A lambardar is entitled to eject though he does not collect the whole of the rents, even if another co-sharer objects to the ejectment,<sup>5</sup> specially if there is no definite evidence that any co-sharer other than the lambardar collects rent or a definite portion of it.<sup>6</sup>

The son (a co-sharer) of a lambardar who had obtained a decree for ejectment could not, after his father's death, execute the decree as he had not been authorised to act on behalf of the other co-sharers.<sup>7</sup>

Where half the rent of joint *sir* was collected by the lambardar and the other half by other co-sharers, the lambardar alone was not held entitled to sue to eject.<sup>8</sup>

A lambardar, suing not as such but as a co-sharer, along with another co-sharer, out of three co-sharers cannot get a decree on the ground that he is also the lambardar.<sup>9</sup>

Sub-section (4) provides against a difficult position that may arise, and overrides *Ram Autar v. Kashi*.<sup>10</sup>

<sup>1</sup> *Path Raj v. Jadu Nandan Baksh Singh*, 1927 A. I. R. Oudh 517=4 O. W. N. 1012=IX U. D. (H. C.) 79=9 L. R. R.v. 103=1927 R. C. 550=105 I. C. 161=11 R. D. 652.

<sup>2</sup> *Hans Raj Singh v. Sambho*, XVIII U. D. 79=1937 R. D. 116; *Badri Singh v. Bhup*, V U. D. 527; *Rikhi v. Badri Singh*, II U. D. 534=3 O. L. J. 257=35 I. C. 760, but see *Mahadeo v. Satgur Dayal*, III U. D. 87=4 R. and Cr. L. J. 86.

<sup>3</sup> *Ishuri v. Baij Nath*, XVII U. D. 201=1936 R. D. 263; *Ganga Sakai v. Ganga Baksh*, 10 A. W. N. 8.

<sup>4</sup> *Maya Ram v. Sarju*, VIII U. D. (H. C.) 6=8 L. R. Rev. 91=1926 R. C. 556.

<sup>5</sup> *Gajraj Singh v. Uday Partab Narain Singh*, I U. D. 1; *Gorai Singh v. Balbhadar Singh*, III U. D. 440; *Gajadhar Singh v. Mathura*, IV U. D. 362; *Irshad Ali v. Rasul*, IV U. D. 506; *Bhup Singh v. Kalka Singh*, XII U. D. 146=11 L. R. Rev. 337, following *Hanuman Singh v. Ahmad Ali Khan*, B. R. 6 of 1922, *Contra*, *Sheo Das v. Ram Shankar*, B. R. 2 of 1910=III U. D. 151.

<sup>6</sup> *Babu Ram v. Julpa Singh*, I U. D. 197=29 I. C. 569.

<sup>7</sup> *Torey v. Har Prasad*, XVI U. D. 602=1935 R. D. 506.

<sup>8</sup> *Ram Saran v. Sewa*, VI U. D. 126=6 L. R. Rev. (O.) 91.

<sup>9</sup> *Shib Dayal v. Ram Singh*, 1941 R. D. 324.

<sup>10</sup> 1926 A. I. R. All. 544=VII U. D. (H. C.) 174=7 L. R. Rev. 282=1926 R. C. 355=12 R. and Cr. L. J. 211=95 I. C. 48=10 R. D. 566.



3. The section does not authorise the Collector to enforce the rights mentioned in the section, *e. g.*, by prohibiting the co-sharers from collecting rent.<sup>1</sup>

4. Where an imperfect partition has taken place and the lambardar (before the partition) is not a co-sharer in one of the partitioned lots, the co-sharers of that lot and not the lambardar can sue for rent of land in that lot.<sup>2</sup> Will he, after the partition, be entitled to sue for rent that fell due before the partition? Since he was accountable for all the rents and profits to all the undivided co-sharers, there is no reason to hold that he has not the right to sue. A private partition of *sir* plots is a mere temporary arrangement and does not enable the person to whose lot a plot has come to sue alone for ejectment of the occupant under s. 180.<sup>3</sup>

Where by private arrangement, *e. g.*, private division of tenants between co-sharers one co-sharer is allowed to act as landholder as regards a tenant, he may sue as landholder to eject that tenant;<sup>4</sup> or eject a trespasser from land the tenant of which had been allotted to him.<sup>5</sup> Where by local custom one co-sharer acts for all he alone can sue.<sup>6</sup>

The fact that co-sharers collect separately their respective shares of the rent does not empower any of them to eject tenants,<sup>7</sup> unless there has been a division of the shares of the co-sharers, may be, by private partition.<sup>8</sup> When two co-tenants divide the holding among themselves, and the co-sharers begin to realise their rents separately, some from one and the others from the other, this does not form a division among the co-sharers, and all of them must join to eject, notwithstanding the arrangement.<sup>9</sup>

A perfect partition takes affect from the date of confirmation. A co sharer to whom certain fields have been allotted cannot, before such confirmation, institute proceedings for ejectment against the tenants thereof.<sup>10</sup>

One of two joint managers of a temple estate cannot alone take ejectment proceedings<sup>11</sup>

<sup>1</sup> *Lalta Buz v. Rup Narain*, IV U. D. 333.

<sup>2</sup> *Rukhya v. Sher Khan*, II U. D. 54=4 R. D. 524.

<sup>3</sup> *Mahadeo Singh v. Kamalu*, XI U. D. 229, but see *Chandika Buz Singh v. Sheo Ratan*, III U. D. 128

<sup>4</sup> *Habibulnissa v. Abdul Latif*, 1939 A. L. J. (B. R.) 68=1939 R. D. 377.

<sup>5</sup> *Quadrat Ali v. Muneshar*, 1939 A. L. J. (B. R.) 90=1939 R. D. 439

<sup>6</sup> *Shiv Sagar Pande v. Lachhnan Koeri*, 1939 R. D. 598.

<sup>7</sup> *Muh. Yakub Khan v. Durga Prasad*, III U. D. 42=3 R. and Cr. L. J. 233=4 O. L. J. 384=40 I. C. 848; *Nageshar Singh v. Sripal Singh*, XIV U. D. (H. C.) 143=10 O. W. N. 1286; *Rukmangad Singh v. Balbhadar Prasad*, 1928 A. I. R. Oudh 8=VIII U. D. (H. C.) 286.

<sup>8</sup> *Chandika Boksh Singh v. Sheo Ratan*, III U. D. 91=5 R. and Cr. L. J. 6.

<sup>9</sup> *Ishwar Dayal v. Ghamandi*, III U. D. 176.

<sup>10</sup> *Nadar Singh v. Ghasi*, III U. D. 204.

<sup>11</sup> *Mahadeo v. Satgur Dayal*, III U. D. 87=4 R. and Cr. L. J. 86.

5. The Board has held that when one co-sharer collects rents on behalf of all the co-sharers, but without their consent, he alone cannot sue to eject,<sup>1</sup> even though he joins the others as co-defendants.<sup>2</sup>

Unless it is clearly proved that one co-sharer is entitled to collect the whole rent all must join in a suit to eject.<sup>3</sup> Realisation by one co-sharer of his share shows that the plaintiff co-sharer has not been appointed as an agent to act on behalf of all the co-sharers and he is not entitled to a decree for the balance.<sup>4</sup>

All co-sharers must join in an ejectment suit,<sup>5</sup> or in an enhancement suit,<sup>6</sup> but if the suing co-sharer has been alone making collections from an exproprietary tenant and his right to collect alone has been upheld in several decisions, he alone may sue to enhance.<sup>7</sup>

The mortgagee of a co-sharer should also join.<sup>8</sup>

Where a co-sharer in joint *sir* land mortgages an area thereof in favour of the *sir* tenant, the latter remains tenant of the *sir* and cannot claim the area mortgaged to him as his *khudkasht*. A suit to eject him must be brought by all the co-sharers.<sup>9</sup>

*A* is the recorded tenant and sues to eject *E* as a subtenant. In a suit under section 61 it is declared that *B*, *C* and *D* were also co-tenants with *A*, but not *E*. This declaration does not invalidate the previous suit of *A*, then recorded as sole tenant, to eject *E*.<sup>10</sup>

An agreement within sub-section (2) was inferred, where one of five brothers lived in Burma and the remaining four sued to eject,<sup>11</sup> and where one obtained a decree for arrears of rent.<sup>12</sup>

But if some sue to eject and the others say that they have no objection to the suit, it amounts to all the co-sharers joining in the suit.<sup>13</sup>

<sup>1</sup> *Raja Rai v. Jaleba*, V U D 227=1922 R C 266=7 R D. 422; *Gajju Singh v. Sunder Lal*, II U D. 441=3 Rev and Cr L J. 205; *Tirben Sahai v. Dripal*, V U D. 509=1923 R. C. 79=11 Rev and Cr L J. 53=6 L R Rev. 12=VI U. D. 323=1924 R. C. 600=7 R. D. 309=9 R D. 264.

<sup>2</sup> *Budh Singh v. Kalka Prasad*, 3 L. R. Rev. 29=5 R D 240 This is much more so when the plaintiff does not collect or is not entitled to collect the whole rent, *Sant Lal v. Shoo Ram Singh*, IV U D. 631=2 U P. L R. (B. R.) 164=5 R. D. 338.

<sup>3</sup> *Tulshi v. Bhulan*, 10 L. R. Rev. 102=X U. D 96=13 R. D. 381.

<sup>4</sup> *Nageshar v. Bindeshari*, 1941 R. D. 326.

<sup>5</sup> *Mahabir v. Buij Nath*, 13 R. D 666=117 I. C. 35=XI U. D. (H C.) 53, 530=11 L. R. Rev. 7; *Ram Nares v. Bhulan*, XV U. D. 207 (suit under section 171) *Raghu Raj Singh v. Hamid Husain*, XVI U. D. 587 (the fact that defendant did not plead the bar of the section is immaterial.)

<sup>6</sup> *Gangadhar Rai v. Jaimangal Rai*, 10 L. R. Rev. 317=X U. D. 163=13 R. D. 818.

<sup>7</sup> *Gangadhar Rai v. Jaimangal Rai*, X U. D. 163=10 L. R. Rev. 317.

<sup>8</sup> *Fatima v. Sirajuddin*, XVII U. D. 49=1936 R. D. 85.

<sup>9</sup> *Raghu Nandan v. Ram Bachan Singh*, XVIII U. D 243=1937 R. D 345.

<sup>10</sup> *Ram Lal v. Bhim Buli*, 15 L. R. Rev. 10=XV U. D. 40

<sup>11</sup> *Gurcar v. Gulab*, I U. D 241=32 I. C. 781; *Rajola v. Parbati*, 9 L. R. Rev. 160=VIII U D. 18=11 R. D. 18.

<sup>12</sup> *Koka v. Kishan Prasad*, V U. D. 302=1922 R. C. 450=7 R. D. 517.

<sup>13</sup> *Makund Singh v. Ajodhia*, 1938 A. L. J. (B. R.) 54.

Where a tenant held some plots for which he paid rent to A, one of several co-sharers, and others without rent, A alone was not entitled to sue to eject from the unrented area.<sup>1</sup>

If all the co-sharers join as plaintiffs in an ejectment suit but one withdraws, the whole suit fails.<sup>2</sup>

This view does not take into consideration, O. 23, r. 1 (4), of the Code of Civil Procedure, and has not been accepted in the next case cited.

Since O. 23, r. 1 (4), does not permit one of several plaintiffs to withdraw without the consent of the others, a suit for ejectment cannot be dismissed because some of the plaintiffs have withdrawn from the suit.<sup>3</sup>

Where in a suit purporting to have been brought by all the co-sharers it is found that some put their signatures on the plaint on account of fraud practised on them, the suit fails as not brought by all. It is not a case of withdrawal of some plaintiffs.<sup>4</sup>

Where one of several co-mortgagors redeems the mortgage he alone is entitled to possession until the others redeem their shares from him; until such event he alone may sue for ejectment.<sup>5</sup>

Death of an occupancy tenant without proper heirs terminates a mortgage created by him and the possession of the mortgagee becomes that of a trespasser. He can be ejected by some only of several proprietors even against the wishes of the others.<sup>6</sup> The terms of section 180 disprove this view. See the cases cited thereunder in note 9.

The brother of a minor constituting a joint family with him cannot grant a perpetual lease of land at an inadequate rent and a premium, without any necessity for the lease or raising ready money. If, however, the lessee gets into possession and rent has before been accepted from him, that creates the relation of landlord and tenant and the lessee is not a trespasser. The rights and liabilities of the putners can be settled in a Revenue Court.<sup>7</sup>

<sup>1</sup> *Bhola v. Bhajan Lal*, IV U. D. 292=6 R. D. 490. See also *Mata Badal v. Sheo Baran*, 9 L. R. Rev. 129=1927 R. C. 583=IX U. D. 62=12 R. D. 471.

<sup>2</sup> *Kali Charan Rai v. Sukhawati*, III U. D. 306=I U. P. L. R. (B. R.) 14; *Tirath-raj v. Gajadhar*, III U. D. 146=4 R. D. 1. So if some compromise, it is not binding on the others, *Vidya Dhar v. Lala Ram*, IX U. D. 149=9 L. R. Rev. 319=12 R. D. 750.

<sup>3</sup> *Bhajan Singh v. Ram Singh*, 14 L. R. Rev. 14=XIV U. D. 12.

<sup>4</sup> *Ram Nath v. Bhagwati Prasad*, 14 L. R. Rev. 896=XIV U. D. 524.

<sup>5</sup> *Mahadeo Singh v. Ram Harak Singh*, III U. D. 327=4 R. D. 148.

<sup>6</sup> *Muni Singh v. Muthura Dube*, V U. D. 171=8 Rev. and Cr. L. J. 308=1922 R. C. 497. But see *Ramakant v. Basant*, 6 L. R. Rev. 21=VI U. D. 346=1925 R. C. 5.

<sup>7</sup> *Basdeo Narain v. Muh. Yusuf*, 51 All. 285=26 A. L. J. 1313=1928 A. I. R. All. 617=IX U. D. (H. C.) 299=9 L. R. Rev. 321=12 R. D. 711.

Where all co-sharers do not join in granting a *theka* the lessee is not a tenant of all, but only of those who gave him the lease. They alone may therefore eject him.<sup>1</sup>

Curious results sometime follow from this. Two out of three tenants create a mortgage with possession. Though invalid, the mortgagors are estopped from suing to eject the mortgagee; and the third cannot sue alone to eject him.<sup>2</sup>

The *onus* is on plaintiff to prove that he is entitled to sue alone.<sup>3</sup> When the vendee of a share sues the occupier for rent of plots which had been the *sir* of the vendors who had not claimed ex-proprietary rights, and the defendant challenges his right to sue alone, an opportunity should be given to the plaintiff to join other co-sharers as plaintiffs or defendants, so as to give them an opportunity to show why the plaintiff cannot sue alone.<sup>4</sup> An unregistered *Phat Bundi* not formally executed by some of the co-sharers is not such proof.<sup>5</sup>

6. **Co-sharers in any right.**—The expression is not confined to proprietary right. A tenant right is also included<sup>6</sup>; so is also a rent-free holding a right. One tenant may sue to eject a trespasser.<sup>7</sup> Where one of several co-sharers ejected an occupancy tenant he alone may sue to eject the sub-tenant as trespasser under section 180.<sup>8</sup> Where ex-proprietary rights arose in favour of three persons, and the vendee got into possession, two of them were held entitled to sue for recovery of possession.<sup>9</sup> But see note 5 above.

A co-sharer who obtained a decree for arrears of rent against an ex-proprietary tenant could not apply alone to eject him<sup>10</sup> specially after the tenant had relinquished the holding.<sup>11</sup>

Where the vendee alone puts the subtenant of *sir* land sold to him into possession, ex-proprietary rights not being claimed by the vendor, he alone may sue to eject.<sup>12</sup>

After the vendor has been ejected from the ex-proprietary holding, a person who has taken possession of it may be ejected only by all the co-sharers.<sup>13</sup>

<sup>1</sup> *Kabir v. Ram Pragas*, 10 L R Rev 154=X U. D. 125=13 R D. 501.

<sup>2</sup> *Sahai Ram v. Girdhari*, V U D 519=1923 R C. 132=6 L. R. Rev. 15.

<sup>3</sup> *Lalun v. Hemruj*, 20 W. R 76; *Ashraf v. Ram Kishore*, 23 W. R. 288; *Ram Sagar v. Lal Kishan*, 5 L R. Rev. 221=VI U. D. 15, 173=1923 R. C. 252=10 R. and Cr. L. J. 280=8 R. D. 112.

<sup>4</sup> *Seoki v. Rituraj Rai*, X U. D. 105=13 R D. 681.

<sup>5</sup> *Lalun v. Hemruj*, 20 W. R 76.

<sup>6</sup> *Din Dayal v. Anjan Lal*, XIII U. D. 128=14 L. R. Rev. 3.

<sup>7</sup> *Amir v. Choral*, III U. D. 409=4 R D 227.

<sup>8</sup> *Horum Singh v. Dilsher*, XII U. D. 87=15 R D. 396; *Sheo Kailash v. Babua*, B. R. 9 of 1932=XIII U. D. 91.

<sup>9</sup> *Chhedi v. Anantoo*, III U. D. 342=4 R. D. 151.

<sup>10</sup> *Zainab v. Chhangu*, I U D. 137.

<sup>11</sup> *Surat Kumari v. Mathura Prasad*, XVII U. D. 29=1936 R. D. 46

<sup>12</sup> *Malhu Ram v. Jag Mohan*, VII U. D. 89=7 L R. Rev. 111=12 Rev. and Cr. L. J. 120=1926 R. C. 110=15 R. D. 445.

<sup>13</sup> *Thakur Prasad v. Sheo Pujan*, IX U. D. 68=9 L. R. Rev. 250=12 R. D. 506.

The mere fact of having the rent fixed and the area demarcated does not entitle him to sue alone for arrears of rent. Law discourages the division of tenants among the proprietary body and the collection of the whole of the rents from such tenants<sup>1</sup>

Where every co-sharer in a *khata* was in separate possession of his *sir* and *khudkasht*, and on the sale by one of them of his interest, his ex-proprietary tenancy land was demarcated and rent fixed at the instance of the vendee, the latter cannot alone sue for arrears of rent.<sup>2</sup>

Where the vendee of a proprietary share has the *sir* land of the vendor demarcated and rent fixed on the same and subsequently gets the ex-proprietary tenant ejected for non-payment of rent, he is the landholder of the land, and can eject a trespasser thereon<sup>3</sup>

A co-sharer selling his share becomes an ex-proprietary tenant of all the co-sharers in respect of his *sir* and *khudkasht*, and the fact that the purchaser alone has had the rent fixed, and obtained a decree for arrears of rent and thereunder ejected him, does not entitle him to sue alone another co-sharer who had taken possession of the land vacated.<sup>4</sup> In a subsequent case the Board ruled that under such circumstances the vendee alone can eject as trespassers, the subtenants of the ejected ex-proprietary tenancy, without interference by the remaining co-sharers.<sup>5</sup> If the other co-sharers agree that the ex-proprietary tenant should become tenant of one of them, the latter may sue alone to eject<sup>6</sup> *e.g.*, when the co-sharers allowed the vendee who had the rent fixed, to collect the rents or to eject him, he alone became the landholder of the holding.<sup>7</sup>

If after such ejectment of the exproprietary tenant, the vendee alone admitted the ejected tenant to the holding, he alone may sue for rent<sup>8</sup>

Where A has purchased the share of a co-sharer in a joint *khewat*, he cannot alone sue to eject the sons of the co-sharer, who are in cultivatory possession of his *sir* under a transfer found to be fraudulent, and if the co-sharer's entire interest was not sold, he will never be able to sue for their ejectment, for the father will not agree to such a course.<sup>9</sup>

<sup>1</sup> *Gopi Nath v. Chunni*, XVII U. D. 312=1936 R. D. 443.

<sup>2</sup> *Nathoo Ram v. Mili Lal*, 1939 A. L. J. (B. R.) 19=XX U. D. 89=1938 R. D. 806. (*Per Mehta J. M.*, an agency may be implied.)

<sup>3</sup> *Ram Phool v. Kundan Lal*, XIX U. D. 194=1938 R. D. 601, following *Sheo Kailash v. Babua*, B. R. 9 of 1932=17 R. D. 5.

<sup>4</sup> *Roshan Lal v. Shafiuddin*, XIII U. D. 115=13 L. R. Rev. 192.

<sup>5</sup> *Sheo Kailash v. Babua*, B. R. 9 of 1932=XIII U. D. 91=13 L. R. Rev. 413. The principle of this case was applied in *Dhuma Rai v. Ambika Prasad Singh*, XVI U. D. 37. See also *Asharfi v. Sri Ram*, XVII U. D. 110=1936 R. D. 116.

<sup>6</sup> *Muhammad Faiq v. Balmakund Gir*, XIV U. D. 418=14 L. R. Rev. 153.

<sup>7</sup> *Janki Das v. Duta Ram*, XIV U. D. 1.

<sup>8</sup> *Gendan Lal v. Manphul*, XX U. D. 328=1939 R. D. 118.

<sup>9</sup> *Bakhtawar v. Shankar Singh*, XVIII U. D. 194=1937 R. D. 265, relying on *Seelo v. Kuria Singh*, XVII U. D. 106=1936 R. D. 114.

While a lambardar may admit and eject tenants of *khalsa* land, all the co-sharers in joint *sir* must join to eject a tenant of such *sir*, but the defect is cured if the only remaining co-sharer does not object to an ejectment suit by the lambardar.<sup>1</sup>

See note 8 to section 26 at p. 147 *supra*.

A person in possession of a share by virtue of a Civil Court decree is a co-sharer and the prospect of his being removed from possession by another order of the Civil Court does not make any difference.<sup>2</sup>

Where a lease has been granted by a co-sharer of his *khudkasht* land he alone is the landholder of the lessee.<sup>3</sup>

Some only of several zamindars cannot sue for their share of the zamindari dues.<sup>4</sup>

Defect of non-joinder cannot be cured by examining non-party co-sharers as witnesses to support the case.<sup>5</sup>

7. All things required or permitted to be done.—A co-sharer cannot give a lease of any portion of the joint property in such a way as to affect prejudicially the rights of other co-sharers, but if all the co-sharers act in concert and in the same interest one who did not execute the lease may be estopped.<sup>6</sup>

One of several persons entitled cannot sue under section 61.<sup>7</sup>

8. Sub-section (2).—Local custom or special contract must be alleged and strictly proved.<sup>8</sup> Without it a co-sharer cannot collect rents.<sup>9</sup> The local custom may be evidenced in a *wajib-ul-arz* or be orally proved. A provision in a *wajib-ul-arz* that the owners of *milk* land collected their own rents does not establish a custom that each co-sharer collected his own share of the rent separately.<sup>10</sup>

Local custom or usage was inferred by one Member but not by the other, where in a village with a very large number of co-sharers the

<sup>1</sup> *Makund Singh v. Ajodhia*, XIX U. D. 188—1938 R. D. 596.

<sup>2</sup> *Musai v. Lachmi Ram*, 2 U. P. L. R. (B. R.) 163—VII U. D. 466—4 R. D. 278.

<sup>3</sup> *Nabiullah v. Raghubir*, 6 L. R. Rev. 128—1927 R. C. 595—IX U. D. 60—12 R. D. 308.

<sup>4</sup> *Mujtaba Husain v. Raghubir Saran*, 1934 A. I. R. All. 1038—1934 A. L. R. 764—150 I. C. 1005

<sup>5</sup> *Raj Kumar v. Ram Lakhan*, 1938 R. D. 169.

<sup>6</sup> *Raja Ram v. Ramai*, V U. D. 33—1922 R. C. 32—3 L. R. Rev. 81—9 R. D. 51.

<sup>7</sup> *Reoti v. Tika Ram*, V U. D. 597—4 L. R. Rev. 374, 396—1923 R. C. 305—10 R. and Cr. L. J. 7—7 R. D. 386.

<sup>8</sup> *Ram Sagar v. Lal Kishan*, VI U. D. 15, 173—10 Rev. and Cr. L. J. 280—5 L. R. Rev. 221—1923 R. C. 252—8 R. D. 112; *Jai Pal Singh v. Nabi Khan*, 7 L. R. Rev. 153—12 Rev. and Cr. L. J. 160—1926 R. C. 196—VII U. D. 154—10 R. D. 499; *Nageshar Singh v. Sri Pal Singh*, 8 Luck. 665—1934 A. I. R. Oudh 189—XIV U. D. (H. C.) 143—17 R. D. 556.

<sup>9</sup> *Surat Singh v. Girand Singh*, IV U. D. 9, 149—1 L. R. Rev. 53.

<sup>10</sup> *Kirpa Ram v. Durga Prasad*, II U. D. 722.

*wajib-ul-arz* recorded that the co-sharers had privately divided their *sir* and the rents are to be realised from tenants, and that the co-sharers are realising their rents accordingly.<sup>1</sup>

Where by local custom the co-sharers of a mahal are entitled to collect separately the arrears of rent, a vendee of zamindari who has had the *sir* demarcated and rents fixed can sue separately for that rent.<sup>2</sup>

Where the *wajib-ul-arz* records a local contract or usage which prevents the lambardar from having the sole right to collect rents, the fact that in some previous years all the rents were collected by the lambardar, who was then also the sole proprietor, does not prevent the co-sharers from collecting rents separately, if there has been a division of holdings as between the co-sharers.<sup>3</sup>

See *Murlidhar v. Isri*,<sup>4</sup> as to whether a *kabuliat* accepted by co-lessors may not be a special contract.

An agent may be authorised verbally or in writing.<sup>5</sup>

Sub-section (2) is ambiguous. It may mean that if a co-sharer is by agreement or custom entitled to collect his share of the rent, he may do so or sue for it, or that he may do anything in respect of the persons from whom he collects rents separately anything which a landholder can do. Some of the Board's rulings lead to the conclusion that sub-section (2) is confined to the right of collection of rent or to suits for rent. Thus, where co-sharers collected their rents separately from tenants, none of them was held entitled to eject any tenant without the others,<sup>6</sup> although such tenant be a person from whom he collects.<sup>7</sup> Other decisions give the contrary inference that sub-section (2) embraces ejectment suits also.<sup>8</sup>

Where a custom exists entitling the purchaser of a fractional share of *sir* to collect rent from the ex-proprietary tenant thereof (the vendor) and the sale-deed also confers that right, a suit for rent by the

<sup>1</sup> *Bachan Singh v. Dulal Singh*, XX U. D. 93=1938 R. D. 816.

<sup>2</sup> *Narain Singh v. Balwant Singh*, XV U. D. 120=15 L. R. Rev. 323.

<sup>3</sup> *Taj Singh v. Lal Singh*, 9 L. R. Rev. 340=IX U. D. 164=12 R. D. 782.

<sup>4</sup> 6 All. 576.

<sup>5</sup> *Gopinath v. Umakant*, 24 Cal. 109; *Ahsanullah v. Eru*, 1923 R. C. 434=VI U. D. 17=4 L. R. Rev. 324=8 R. D. 114.

<sup>6</sup> *Gajraj Singh v. Muh. Siddiq*, 7 Rev. and Cr. L. J. 179=2 L. R. Rev. 93=IV U. D. 490=3 U. P. L. R. 91=5 R. D. 44, followed in *Nalka v. Muh. Ishaq Khan*, V U. D. 78=1922 R. C. 268=3 L. R. Rev. 221=7 R. D. 120.

<sup>7</sup> *Ishwari Dayal v. Ghamandi*, III U. D. 176=4 R. D. 24.

<sup>8</sup> *Kashy Prasad v. Shalikh Gullu*, 5 L. R. Rev. 182=1924 R. C. 224=1924 R. C. 266=8 R. D. 446; *Janki Prasad v. Har Prasad*, 5 L. R. Rev. 178=10 Rev. and Cr. L. J. 252=8 R. D. 443; *Gokul v. Chhabbir*, V U. D. 354=4 L. R. Rev. 107=1922 R. C. 593=6 R. D. 10, in all of which cases the land was let by the plaintiff, one of two or more co-sharers.

purchaser is not obnoxious under sub-section (1) and is covered by sub-section (2).<sup>1</sup>

In consequence of an arrangement for enjoyment of profits, *A*, one of the co-sharers, was given the sole right to collect the entire rent from a tenant, *B*. This does not authorise *A* to sue *B* for rent.<sup>2</sup> A special contract empowering a co-sharer to collect his own share of the rent must be in writing under section 130, Transfer of Property Act.<sup>3</sup>

The sub-section does not specifically cover a local usage or special contract by which co-sharers in an undivided property have agreed among themselves to divide up the tenants and collect the whole rent of individual tenants in satisfaction of their share of the rent of the mahal or *patti*, whatever it might be. A co-sharer, in a formally undivided property is, therefore, entitled to eject a tenant by whom by local custom or special contract the whole rent is payable to that co-sharer alone.<sup>4</sup>

Where the Board in a mutation case holds that a co-sharer is a sharer of a specified share and the *wajib-ul-arz* entitles each sharer to collect rent from each tenant in respect of his share, that co-sharer may sue alone for his share of the rent of a particular tenant.<sup>5</sup>

Sub-section (2) applies only when the special contract is for a co-sharer to collect his own share of the rent from a tenant, and not when a co-sharer is empowered to collect the entire rent of a tenant.<sup>6</sup>

A mortgagee of an occupancy holding cannot sue alone a sub-tenant of the holding for arrears of rent, unless he proves a contract of tenancy between him and the defendant, or that the subtenant has been paying rent to him, and if he so proves it the fact that the mortgage was void or voidable is not material.<sup>7</sup>

Where a co-sharer has for over 25 years been collecting rents of certain plots and has in execution of a decree for arrears of rent obtained possession of those plots, he alone may eject trespassers from those plots, though the latter be mortgagees of a share in the village.<sup>8</sup>

<sup>1</sup> *Durbijai Singh v. Zohra*, 1937 A. I. R. All 760=1937 A. L. J. 1130=XVIII U. D. (H. C.) 194=1937 R. D. 480

<sup>2</sup> *Jahangira v. Sarup*, XI U. D. (H. C.) 171=11 L. R. Rev. 132.

<sup>3</sup> *Man Singh v. Roshan*, XVII U. D. 68=1936 R. D. 230.

<sup>4</sup> *Habib-ul-nissa v. Abdul Latif*, XX U. D. 339=1939 R. D. 377, following *Bansi v. Amir*, B. R. 9 of 1923. See also *Sri Kantoo Singh v. Deoki Nandan Singh*, XVI U. D. 60=1935 R. D. 36.

<sup>5</sup> *Bahori v. Kastola*, 14 L. R. Rev. 154=XIV U. D. 424.

<sup>6</sup> *Jahangira v. Sarup*, 1930 A. I. R. All. 209=XI U. D. (H. C.) 171=14 R. D. 327.

<sup>7</sup> *Mathura Ram v. Jan Khan*, 1938 A. L. J. (B. R.) 121=1938 R. D. 351, relying on *Putti Lal v. Lodhi*, 1936 R. D. 384 and distinguishing *Pitai v. Karedin*, B. R. 2 of 1933.

<sup>8</sup> *Bare Lal v. Umrao Singh*, XX U. D. 349=1939 R. D. 397.



Where a co-sharer has not been heard of for 7 or 8 years, and his share is in the possession of another co-sharer who pays revenue for it, the latter may sue to eject.<sup>1</sup>

In the absence of such agreement or custom a co-sharer cannot sue alone to eject a *sir* tenant,<sup>2</sup> *e. g.*, one of several successors to a right,<sup>3</sup> or the mortgagee of the interests of some of several proprietors<sup>4</sup> or a co-sharer.<sup>5</sup> Where a tenant mortgages his holding to one of several undivided co-sharers in a *mahal*, the other co-sharers cannot sue the tenant and the mortgagee co-sharer for ejectment under section 171 for illegal subletting.<sup>6</sup>

A, B, C and D owned separate *khatas*. At a partition all these were amalgamated into one. Before confirmation of partition each can sue for ejectment of a tenant in his separately owned *khatas*.<sup>7</sup> Partition puts an end to joint status. Therefore if tenants of a holding divide it among themselves even without consulting the zamindar, the partition is binding on them, and a person in whose lot a land has come may sue alone to eject its sub-tenant.<sup>8</sup>

A private partition given effect to by the parties or by the Civil Court though not in *patwari's* papers, makes each co-sharer sole owner of the lot given to him, and he alone may sue to eject in respect of the land allotted to him.<sup>9</sup>

Where part of joint *sir* is sold and ex-proprietary rights are not claimed, the whole *sir* remains the *sir* of the surviving *sir* holders. Unless and until the share is partitioned the purchaser has no right to separate possession and cannot sue alone to eject *shikmi* tenants thereof.<sup>10</sup>

The difference between sub-sections (2) and (3) is that under sub-section (2) the other co-sharers need not be joined whereas under sub-s. (3)

<sup>1</sup> *Jumna Rai v. Jagardeo*, 1927 R. C. 417=8 L. R. Rev. 355=VIII U. D. 177=11 R. D. 20; *Jamuna Rai v. Muta*, 8 L. R. Rev. 356=1927 R. C. 419=VIII U. D. 128=12 R. D. 288.

<sup>2</sup> *Narain Gir v. Mahadeo Rai*, XI U. D. 210=14 L. R. Rev. 111.

<sup>3</sup> *Chagud v. Singasun*, V U. D. 268=9 Rev. and Cr. L. J. 153=4 L. R. Rev. 106=1922 R. C. 369. A husband may sue to eject, where he and his wife are co-sharers, *Lal Bahadur v. Munder Prasad*, 7 L. R. Rev. 375=1926 R. C. 428=VII U. D. 225=10 R. D. 288.

<sup>4</sup> *Ramyad v. Khedu Singh*, V U. D. 91=1922 R. C. 149=3 L. R. Rev. 253=7 R. D. 146.

<sup>5</sup> *Wahid Ali v. Nasratullah*, III U. D. 141=5 R. D. 540.

<sup>6</sup> *Sheo Zor Rai v. Sheo Gopal*, XIII U. D. 64=13 L. R. Rev. 94.

<sup>7</sup> *Jageshar Mal v. Raghunandan*, 5 L. R. Rev. 217=VI U. D. 172=1924 R. C. 263=8 R. D. 168.

<sup>8</sup> *Jurad Husain Khan v. Raghunath Singh*, V U. D. 436=9 Rev. and Cr. L. J. 220=4 L. R. Rev. 195=1923 R. C. 114=7 R. D. 240.

<sup>9</sup> *Bikarmajit Singh v. Naika Singh*, 7 L. R. Rev. 404=VII U. D. 234=1926 R. C. 504=10 R. D. 272.

<sup>10</sup> *Karia Singh v. Ram Nath*, V U. D. 395=1924 R. C. 531=6 R. D. 55.

in the absence of a special contract referred to in sub-section (2), the co-sharers who refuse to join should be added as defendants, but the plaintiff's claim is limited to his share of the rent in any case. The liability of the defendant to pay plaintiff's share of the rent is not affected by the fact that the other co-sharers are joined as defendants after the expiration of the period of limitation for a suit by them.<sup>1</sup>

Where some out of a number of co-sharers collected rent and two of them as lambardars were entitled to collect on behalf of the others, a distraint levied by such persons was held valid.<sup>2</sup>

9. Sub-section (3).—One co-sharer may sue for his share of the rent when the others refuse to join as plaintiffs,<sup>3</sup> but not for the whole rent.<sup>4</sup>

*A* and his brother *B* were the zamindars. *A* sued some tenants for recovery of rent and subsequently impleaded *B*. Before acting under section 246 (1), the Court ought to enquire whether the defendant was a tenant of *B*. On an affirmative finding the entire suit ought to be dismissed. On a negative finding, *A*'s suit to the extent of half should be decreed, and the defendant cannot urge that the whole suit should be dismissed as *B* was joined after the period of limitation.<sup>5</sup>

This sub-section does not apply where the petition is to appraise the tenant's crop with a prayer for a decree for plaintiff's share as there is no suit for separate share of the plaintiff.<sup>6</sup>

*In a suit for money.* Subsection (3) applies only to suits for money recoverable jointly and not to other suits. A private partition of a vague nature is not enough to take a case out of section 246.<sup>7</sup>

10. Sub-section (4).—Under the old sub-section i.e., section 266 (4) of the Act of 1926 which did not include the words "or the illegal transferee of such tenant," it was held that *Tenant* did not include a transferee of a tenant. The subsection was framed to deal with the case of tenants who had acquired proprietary rights and who refused to discharge their liabilities as tenants. Hence on a transfer of his rights by an occupancy tenant to one of several landlords, the whole body of them must sue to eject the tenant and the transferee and hence a suit by all the others except the transferee (who could hardly be expected to join) was had.<sup>8</sup> Now the difficulty has been removed and the transferee need not be joined as plaintiff.

<sup>1</sup> *Jahanqira v. Sarup*, 1930 A. I. R. All 309=123 I. C 828=XI U. D. (H. C.) 171=1 L. R. Rev. 132=11 R. D. 32.

<sup>2</sup> *Ahmad v. Sawai*, II U. D. 685.

<sup>3</sup> *Fateh Bahadur v. Lalta Prasad*, 17 I. C. 488; *Mata Dayal v. Debi Prasad*, 25 I. C. 531. In Oudh, the rule was otherwise, *Mahadei v. Sant Baksh Singh*, 1 O. L. J. 570=26 I. C. 237.

<sup>4</sup> *Manohar Lal v. Baldeo Singh*, 49 All 918=25 A. L. J. 582=1927 A. I. R. All. 505=VIII U. D. (H. C.) 203=8 L. R. Rev. 225=1927 R. C. 219=103 I. C. 379=11 R. D. 408; *Sundar Lal v. Chunni Lal*, XVII U. D. 119; *Chitra v. Sher Ali Khan*, XVII U. D. 167.

<sup>5</sup> *Abdul Haq v. Lallu*, 11 L. R. Rev. 189=XI U. D. (H. C.) 240=14 R. D. 407.

<sup>6</sup> *Ram Garib Singh v. Sarju*, II U. D. 454.

<sup>7</sup> *Gobardhan v. Padam Singh*, 4 Rev. and Cr. L. J. 189=46 I. C. 652.

<sup>8</sup> *Sheozor Rai v. Sheo Gopal*, 13 L. R. Rev. 94=XII U. D. 120=16 R. D. 204; *Ram Naresh v. Bhulan*, XV U. D. 207=18 R. D. 228.

11. One of two tenants cannot sue for damages for ejection under a reversed decree.<sup>1</sup>

12. The section does not apply to appeals,<sup>2</sup> or when pending an appeal from an ejection case, the tenant has purchased the share of some of the co-sharers.<sup>3</sup>

13. The plea of non-joinder can be taken at any stage of the suit,<sup>4</sup> but cannot be allowed to be raised for the first time in appeal.<sup>5</sup> Nor can it be raised in execution proceedings<sup>6</sup>.

**247. (1)** When in any suit brought under this Act by a landholder against an under-proprietor or a tenant for arrears of rent the under-proprietor or the tenant pleads that he has paid the rent of the holding for the period in respect of which the suit is brought to a third person whom he in good faith believed to be entitled to receive such rent the court shall, at the cost of such under-proprietor or tenant, as the case may be, make such third person a defendant in the suit and shall inquire into and decide the question.

(2) If the question is determined in favour of the under-proprietor or the tenant, the suit shall be decided in his favour and he shall not be made a party to any subsequent suit between the landholder and the third person for the recovery of the amount so paid or for the determination of the proprietary right in the holding.

1. This corresponds to section 138 of the Oudh Act, and to section 270 of the Agra Act of 1926 adding "an under-proprietor or" and substituting "whom he in good faith believed to be entitled to receive such rent" for "to whom he has in good faith been paying the rent of the holding up to the date of the institution of the suit or the date of distraint", "the court shall, at the cost of the underproprietor or tenant, as the case may be, make such third person" for "such person shall, at the cost of the plaintiff, be made," and "shall enquire into and decide the question" for "the question of the payment of rent in good faith to such third person by the tenant shall be enquired into."

Section 270 of the Act of 1926 corresponded to section 198 of the Act of 1901 and to section 148 of the Rent Acts.

<sup>1</sup> *Gulab Singh v. Kuar Prasad*, IV U. D. 231=6 R. D. 431.

<sup>2</sup> *Ram Lal v. Umrao*, 29 I. C. 568=I U. D. 195; *Ubaid Husain v. Sumera*, 7 L. R. Rev. 294=12 Rev. and Cr. L. J. 242=1926 R. C. 371=VII U. D. 179=10 R. D. 519; *Shiva Narain v. Kali Charan*, XVI U. D. 458=1935 R. D. 375.

<sup>3</sup> *Debi Mangal v. Jagessar*, 9 Rev. and Cr. L. J. 215=1923 R. C. 110=V U. D. 458=4 L. R. Rev. 202=7 R. D. 255.

<sup>4</sup> *Raj Kumar v. Ram Lakhan*, 1938 R. D. 164.

<sup>5</sup> *Chota Lal v. Aman Singh*, IV U. D. 369; *Hakim Singh v. Abu Jafar*, VI U. D. 226=5 L. R. Rev. 285=10 R. and Cr. L. J. 342=1924 R. C. 221=8 R. D. 209.

<sup>6</sup> *Shiv Sagar Pande v. Lachhman Koeri*, 1939 R. D. 598.

2. **Against an under-proprietor or a tenant.**—The section applies where a suit is against an under-proprietor or a tenant for arrears of rent, and not when a plaintiff is alleged by the defendant to be his tenant.

3. **The under-proprietor or tenant pleads etc.**—The plea must be to the effect that he has paid the rent to another whom he believed to be entitled to receive the rent<sup>1</sup> and not that he is the tenant of a third party.<sup>2</sup> A muafiholder died 30 years ago. His son recently came to the village and got his name entered in place of his father, and sued the subtenant for rent. The latter, having paid direct to the landlord, pleaded payment in good faith. It was held to be a good plea, as it was unlikely that he would have been allowed to occupy the land without paying rent to anyone.<sup>3</sup> Where the defendant denies the relation of landlord and tenant on the ground that he is a rent-free grantee or proprietor, the section has no application. So where the defence is, not that he has actually paid the rent to someone else whom he believed in good faith to be entitled to receive the rent, but that someone else alleging a superior title claims the rent and therefore he does not know whom to pay it to, the section has no application. If in such a case the third party is made a defendant, and the Court decides for or against him, the remedy of the defeated party will not be a civil suit but an appeal, as a question of proprietary right is in issue. *A* sued *B*, who had been his tenant, for arrears of rent. *B* pleaded that *A*'s rights had been purchased by *C*, who had forbidden him to pay the rent to *A*. *C* was made a party on his own application. The Assistant Collector decreed the claim, thereby holding that *C* had no title. It was held (by Stanley, C. J. and Burkit, J.) that as *B* had not pleaded actual payment of rent in good faith to *C*, section 198 of the Act of 1901 did not apply, and a question of proprietary title having been raised, *C* could appeal to the District Judge under section 177 (e) of that Act.<sup>4</sup>

A question of proprietary title will not arise if *A* sued *B* as a sub-tenant and *B* alleged the tenancy-in-chief in himself.<sup>5</sup>

<sup>1</sup> See *Baleshar Nath v. Radhu Kishun Singh*, 14 L. R. Rev. 489=XIV U. D. 240; *Sri Ram v. Nathan Lal*, XVI U. D. 184.

<sup>2</sup> *Shri Dhar v. Udibir Singh*, 1929 A. I. R. All. 17=115 I. C. 454=9 L. R. Rev. 289=IX U. D. (H. C.) 214=12 R. D. 703.

<sup>3</sup> *Khushal v. Sheo Datta*=XIII U. D. 96.

<sup>4</sup> *Sheo Dehal v. Badri Narain*, 33 All. 61=7 A. L. J. 1198=8 I. C. 1098; *Abdul Rauf v. Masihuddin*, 1929 A. I. R. All. 409=IX U. D. (H. C.) 172=9 L. R. Rev. 172=12 R. D. 252 See *Ahmadullah Khan v. Murli*, 26 A. W. N. 69=5 A. L. J. 128; *Chotu v. Juttun*, 3 All. 53. But see *Salamat Ali v. Gaj Kumar*, 1925 A. I. R. All. 574=VI U. D. (H. C.) 395=11 Rev. and Cr. L. J. 89=6 L. R. Rev. 53=1924 R. C. 433=85 I. C. 302=9 R. D. 487.

<sup>5</sup> *Baldeo v. Koshi*, 24 A. L. J. 337=1925 A. I. R. All. 312=7 L. R. Rev. 49=12 Rev. and Cr. L. J. 56=1926 R. C. 73=VII U. D. (H. C.) 41=92 I. C. 995=10 R. D. 48.

Belief in good faith must be alleged.<sup>1</sup> When not so alleged or proved or found against, the third party is out of court.<sup>2</sup>

The third person to whom rent is alleged to have been paid does not include a co-lambardar,<sup>3</sup> as he is ostensibly entitled to collect the rent and a question of belief in good faith will not usually arise.

Payment of rent by an uncle to a lambardar who is an undischarged insolvent is not in good faith.<sup>4</sup>

A payment to a person a second time after his right to receive it has been questioned and found against is not in good faith.<sup>5</sup> Where a tenant had up to the period from which the dispute commenced paid his rent to *A*, a payment of rent to *B* cannot be said to be under a belief in good faith.<sup>6</sup>

On breach of covenants in a *theka* which entails forfeiture, the landlord cannot make a forcible re-entry. If he does and begins to collect rents from tenants, he cannot be said to be receiving and enjoying the rents actually and in good faith; and hence he should not be joined in a suit by the thekadar against the tenants for rent.<sup>7</sup>

A sub-tenant of a mortgagee of a tenant who gives a *kabuliat* to the zamindar and pays rent to him does not do so in good faith.<sup>8</sup>

*A* sued *B*, as tenant, for arrears of rent, and impleaded his co-sharers as defendants. *B* pleaded that he had paid the rent in good faith to *C*, a co-sharer co-defendant. *C* admitted receipt of the rent. The first Court dismissed the suit. *A* appealed as against *C* only, on the ground that he had received a portion at least of the rent in excess of his share and therefore a decree ought to have been passed against him. This was disallowed.<sup>9</sup>

Under the phraseology of the repealed Acts it was held in both provinces that the payment of rent pleaded must have been habitual.<sup>10</sup> This is not necessarily so now, but belief in good faith implies nearly

<sup>1</sup> See *Jeoni v. Kullu*, 19 A. L. J. 288—7 Rev. and Cr. L. J. 119—60 I. C. 837—43 A. 448—IV U. D. 720—6 R. D. 314; *Sheo Balak Ram v. Mohan Lal*, 1927 A. I. R. All. 745—1927 R. C. 39—VIII U. D. (H. C.) 88—8 L. R. Rev. 94—99 I. C. 534—11 R. D. 592.

<sup>2</sup> *Chandrawati v. Bhagwanta*, 19 O. C. 32—35 I. C. 444.

<sup>3</sup> *Maya Ram v. Sarju Nath*, 1925 A. I. R. Oudh 455—VI U. D. (H. C.) 473—VIII U. D. (H. C.) 62—6 L. R. Rev. (O) 81—8 L. R. Rev. 9—1925 R. C. 317—1926 R. C. 556—12 O. L. J. 185—87 I. C. 168—2 O. W. N. 150—28 O. C. 389.

<sup>4</sup> *Janki Ballabh Tripathi v. Pran Sukh*, XV U. D. 372.

<sup>5</sup> *Birbal v. Fateh Ram*, XV U. D. 382.

<sup>6</sup> *Nidha v. Ram Prasad*, 5 O. L. J. 176—46 I. C. 6—4 R. and Cr. L. J. 196.

<sup>7</sup> *Habibullah v. Surji*, 15 O. C. 295, following *Hamid Ahmad v. Baj Nath*, Rent Act Ruling No. 66.

<sup>8</sup> *Bihari v. Ram Lal*, II U. D. 391.

<sup>9</sup> *Nabuan v. Gayadai*, 1 A. L. J. 707.

<sup>10</sup> *Ram Narain v. Jai Pal*, 2 Leg. Rev. 10; *Habibullah v. Surji*, 15 O. C. 295—15 I. C. 857; *Mahadev v. Sant Baksh Singh*, 1 O. L. J. 570—26 I. C. 237; *Hamid Ahmad v. Baj Nath*, Rent Act Ruling No. 66.

the same idea, for what can be a surer basis for this belief than habitual payments in the past. But it may be that payments for a year or two preceding the alleged payment may justify such a belief.

Where the defendant does not raise the plea but a third party intervenes that he is the actual tenant and not the defendant, the Court should enquire into the matter<sup>1</sup> and its decision cannot be challenged by the defeated party by means of a civil suit.<sup>2</sup> Such a case is really not under this section.

In a suit by a rent-free grantee against a recorded sub tenant, the question of title between the grantee and a third party made a party at his own request can not be gone into.<sup>3</sup>

Where a suit for arrears of rent is decreed *ex parte*, it establishes the plaintiff's right to sue alone for subsequent years.

When the plea indicated in this section is raised, the third party must be made a defendant, either by the court or on his own application.<sup>4</sup> In *Raja Ram v. Ranjit Ram*,<sup>5</sup> the Board held that the third party should be joined to prevent further litigation and omission to implead the third party makes the suit defective.<sup>6</sup> The court is bound<sup>7</sup> to enquire (*shall* and not *may* enquire, as under the Rent Act) into the question of such payment of the rent to such third person. The enquiry should refer to the period prior to that for which the rent is claimed.<sup>8</sup> Where a third party intervened and alleged that he had actually received payments of rent in the past, he should be impleaded and the matter enquired into.<sup>9</sup> The intervenor need not prove his title, but must prove the actual receipt and enjoyment of the rent.<sup>10</sup> If the defence is proved the court should dismiss the suit. It cannot pass a decree against the third person.<sup>11</sup>

<sup>1</sup> *Brij Mohan v. Gulsari*, 1 A. L. J. 703.

<sup>2</sup> *Sardar Singh v. Bal Kuar*, 1927 A. I. R. All. 145=7 L. R. Rev. 496=VII U. D. (H. C.) 230=1926 R. C. 511=98 I. C. 981=10 R. D. 315.

<sup>3</sup> *Rashid Ahmad v. Phul Singh*, XVI U. D. 305.

<sup>4</sup> *Alla Uddin v. Hira*, 9 L. R. Rev. 231=IX U. D. (H. C.) 114=12 R. D. 442 ; *Jhamman Singh v. Khuman*, 9 L. R. Rev. 272=IX U. D. 94=12 R. D. 560 ; *Sita Ram v. Sheo Nath*, X U. D. 117=10 L. R. Rev. 125=13 R. D. 362.

<sup>5</sup> 11 Rev. and Cr. L. J. 62=VI U. D. 405=6 L. R. Rev. Oudh 20=8 R. D. 303=1925 R. C. 74.

<sup>6</sup> *Ram Subhag v. Jag Narain*, XI U. D. 108=14 R. D. 436.

<sup>7</sup> *Nabuan v. Gaya Dat*, 1 A. L. J. 707 ; *Alla Uddin v. Hira*, 9 L. R. Rev. 234=IX U. D. 114=12 R. D. 442.

<sup>8</sup> *Chandrawati v. Bhagwanta*, 19 O. C. 32=35 I. C. 444.

<sup>9</sup> *Khuda Baksh v. Babu Lal*, 2 O. C. 135.

<sup>10</sup> *Sripal v. Ram Saran*, 2 O. C. 137.

<sup>11</sup> *Gobind Ram v. Narain*, 9 All. 394=7 A. W. N. 79 ; *Madho Prasad v. Ambar*, 5 All. 503=3 A. W. N. 103 ; *Mata Din v. Ajudhia Prasad*, Oudh Rent Act Ruling, No. 53 ; *Lakshmi Narain v. Harish Chandra*, 1940 A. L. J. 365.

In a case to which this section applies, decree should not be passed against the tenant if he has paid the rent claimed in good faith to a third person, *e. g.*, to the recorded proprietor,<sup>1</sup> or to the lambardar<sup>2</sup> for the time being,<sup>3</sup> or to the mortgagee in possession.<sup>4</sup> But if the payment was not in good faith, *e. g.*, was made after a decree against the right of the third party in a suit between him and the plaintiff, the tenant is not released from his liability;<sup>5</sup> so if the payment was to a co-sharer, there being a lambardar.<sup>6</sup>

The remedy of the party (other than the tenant) defeated in a case to which this section properly applies is not to appeal from the decree to the District Judge but to bring a civil suit,<sup>7</sup> specially if the tenant against whom the decree has been passed has not appealed.<sup>8</sup> A civil suit seems to be contemplated by sub-section (2); although why an appealed should now be barred is not apparent. The third party has to be impleaded, and if he raises a question of title in himself, section 265 would give an appeal to the Civil Court. Neither will an appeal lie to the Collector where the case (*e. g.*, suit for arrears of rent for a sum not exceeding Rs. 200) has been tried by an Assistant Collector of the second class.<sup>9</sup> Nor can costs be awarded against the intervenor in such a suit.<sup>10</sup>

An intervenor cannot apply in revision.<sup>11</sup>

Where this section does not apply, the remedy may be by way of appeal, *e. g.*, when a question of proprietary title has been decided.

<sup>1</sup> *Kalia v. Kishore Kunwar*, B. R. 4 or 1885.

<sup>2</sup> *Thakur Din v. Dayali*, 1 U. P. L. R. (B. R.) 4=52 I. C. 139=III U. D. 54=5 R. D. 451.

<sup>3</sup> *Chatri v. Bahadur*, 8 A. W. N. 45; *Narpat v. Tika*, 33 I. C. 69=2 Rev. and Cr. L. J. 108=I U. D. 261; *Ali Baksh v. Parkasha*, 31 I. C. 464.

<sup>4</sup> *Ali Baksh v. Prakash*, I U. D. 317=31 I. C. 464.

<sup>5</sup> *Shamshere v. Zahur*, 7 A. W. N. 95.

<sup>6</sup> *Gangasahai v. Ganga Baksh*, 10 A. W. N. 8.

<sup>7</sup> *Anand Ram v. Mausumma Begum*, 13 All. 364=11 A. W. N. 107. See also *Sabi Ali v. Bashir*, 5 A. W. N. 194; *Rajan Koer v. Bechu*, 1 L. R. 61. (H. C.); *Sham Das v. Bahadur Singh*, 43 All. 325=19 A. L. J. 89=7 Rev. and Cr. L. J. 78=2 L. R. Rev. 52=1921 A. I. R. All. 195=6 R. D. 295=1 V U. D. 701; *Habib Khan v. Fida Husan*, V U. D. (H. C.) 147=9 Rev. and Cr. L. J. 162=4 L. R. Rev. 138=1923 R. C. 100=71 I. C. 1017=1924 A. I. R. All. 270=7 R. D. 190; *Brahmdao v. Dubri*, 10 L. R. Rev. 284, X U. D. (H. C.) 225=118 I. C. 379=1929 A. I. R. All. 548=13 R. D. 870.

<sup>8</sup> *Chandrawati v. Bhagwanta*, 19 O. C. 32.

<sup>9</sup> *Krishna Ram v. Hingu Lal*, 4 All. 237=2 A. W. N. 30=2 Leg. Rem. 33 (H. C.); *Hira Lal v. Asa Muhammad*, B. R. 1 of 1930=XI U. D. (B. R.) 7=11 L. R. Rev. 274=14 R. D. 533.

<sup>10</sup> *Anand Ram v. Musumma Begam*, 13 All. 364=11 A. W. N. 107.

<sup>11</sup> *Kanis Fiza v. Trilok Nath*, 7 O. L. J. 309=57 I. C. 480.

A tenant who has actually paid to a third party and is ordered to pay the rent over again to the plaintiff may appeal as allowed by the Act.

Where the defeated party sues to establish his title in the Civil Court the latter has full jurisdiction and the decision of the Revenue Court can not operate as *res judicata*. A zamindar sued to eject an actual cultivator whom the Settlement Officer had recorded as sub-tenant. The defendant pleaded that he was the tenant of B, the usufructuary mortgagee of the holding, and not of the plaintiff. B was made a party, and ejectment was ordered. B then sued in the Civil Court to recover possession of the holding on the ground that the defendant in the prior suit was his tenant, and that he was entitled to remain in possession as the mortgagee of the original tenant-in-chief. The District Judge held that the Civil Court had no jurisdiction and the Revenue Court's decision was a bar to the suit. Banerji, J. dissented from the view.<sup>1</sup>

**248.** A beneficial lease or other encumbrance created by an under-proprietor on his tenure after the Registration of encumbrance created by twenty second day of July, 1868, shall not be valid in the event of the sale of his rights and interests in execution of a decree for arrears of rent, unless the encumbrance has been registered under any rule or law for the time being in force in Oudh, within four months after the creation therefore, and not less than thirty days before the date of attachment of those rights and interests.

1. It reproduces section 153 of the Oudh Act Cf. section 161 (1) Land Revenue Act.

2. Assuming that a compromise judicially given effect to need not be registered applies to this section if the decree does not incorporate a term of the compromise although the court directs that a decree be drawn up in terms of the compromise, it is not judicially given effect.<sup>2</sup>

**249.** (1) When an under-proprietor creates any such encumbrance and fails to pay to the proprietor all or any portion of the rent payable by under-proprietor subsequently accruing in respect of the land subject to such encumbrance the encumbrancer shall be liable to pay to the proprietor such rent or such portion as the case may be, unless the proprietor has agreed in writing to waive any claim which he might otherwise have made on the encumbrancer under this section.

(2) Where an under-proprietor transfers his rights, or any part thereof in land, and the transferee enters into possession the transferee shall, subject to any agreement in writing with the proprietor to the contrary, be liable to pay to the proprietor

<sup>1</sup> *Pahalwan v Satrupa*, 27 A. W. N. 178=2 A. L. J. 471.

<sup>2</sup> *Mata Din v. Raghu Raj*, 4 O. C. 78.



any arrears of rent due in respect of the land at the date of the transfer.

1. This reproduces in effect section 154 of the Oudh Act.

2. The incumbrancer or the transferee in possession is made responsible for the rent of the under-proprietor's land subject to the incumbrance or transfer.

A mortgage is an incumbrance, and hence a mortgagee of under-proprietary rights who forecloses is bound to pay the arrears of rent due at that date and if he is pre-empted, he can charge to the pre emptor the amount so paid.<sup>1</sup> The mere fact of non-payment of a decree for arrears of rent by him does not deprive him of his right to sue on the basis of his mortgage.<sup>2</sup> The liability of a mortgagee to pay the arrears of rent due to the superior proprietor is clear, but if he does not so pay, the section does not imply that his rights as mortgagee should be wiped out.<sup>3</sup> It was also held in that case that section 73, Transfer of Property Act, did not apply to the case where the property was not sold by the Collector at the instance of the decree-holder under the provisions of section 152, Oudh Act. Section 154 (2) reproduced in the present section was held not to apply to involuntary transfers, such as a sale by auction in execution. Hence a purchaser at such an auction is not liable for arrears of rent that accrued before he purchased the under-proprietary right.<sup>4</sup>

Under this section combined with section 146 of the Code of Civil Procedure, an auction purchaser of an under-proprietary tenure in execution of a decree for sale on a mortgage of the tenure is liable to satisfy a decree for arrears of rent obtained against the original under-proprietor, because the section makes the transferee or the incumbrancer liable for the rent subsequently accruing and also liable in consequence of an act of omission to pay the rent on the part of the original under-proprietor, and hence the decree for arrears of rent can be executed against the auction purchaser.<sup>5</sup> The case is hardly distinguishable from the one just cited above and one cannot say that the distinction made by the learned judges is sound except to the extent that whether section 154(2) [now section 249 (2)] applied to auction sales was not discussed in the earlier case.

Where the proprietor obtains a decree for arrears of rent jointly and severally against a body of under-proprietors, and, pending execution, some of the judgment-debtors transfer their interests to the decree-holder to liquidate their debts, the decree-holder is bound to give credit for a

<sup>1</sup> *Hazari Lal v. Ram Narain*, 17 O. C. 379=27 I. C. 420.

<sup>2</sup> *Saifu Khan v. Court of Wards*, 4 O. L. J. 305=40 I. C. 456.

<sup>3</sup> *Narotam Das v. Sukhraj Singh*, IX U. D. (H. C.) 240.

<sup>4</sup> *Bishu Nath Saran Singh v. Ghansham Das*, 1936 A. I. R. Oudh 106=XVI U. D. 961=1935 R. D. 551=O. W. N. 1229=159 I. C. 264.

<sup>5</sup> *Bisheshwar Dayal v. Bajrang Bahadur Singh*, 1929 A. I. R. Oudh 353=X U. D. (H. C.) 112=6 O. W. N. 469=117 I. C. 452.

proportionate amount of the decree. He can not execute the entire decree against the remaining judgment-debtors.<sup>1</sup>

If the under-proprietor has sold his interest and left money with the purchaser to discharge the decree for arrears of rent, the property may be sold under that decree in the hands of the purchaser.<sup>2</sup>

3. A transferee from an under-proprietor of a portion of the tenure becomes a co-sharer with him in the whole tenure jointly and severally liable to pay the whole rent under section 79, Land Revenue Act, and under section 249 (2), the transferee is also liable to pay any arrears of rent due in respect of the tenure at the date of transfer.<sup>3</sup>

The under-proprietor remains liable for rent where a transfer by him is not an out and out sale.<sup>4</sup>

**250.** (1) When land in Oudh is sold in execution of a decree under this Act, and the land or any part thereof has been knocked down to a stranger, any co-sharer of the judgment-debtor but not the judgment-debtor, may, before confirmation of the sale, claim to take such land or part at the highest bid.

(2) A like claim may be made, if the land is a proprietary tenure, by an under-proprietor, and, if the land is an under-proprietary tenure, by a proprietor.

(3) Any claim made under this section shall be allowed :

Provided that a claim made under the provisions of sub-section (1) shall prevail over a claim made under the provisions of sub-section (2).

Provided further that a claim shall not be allowed unless the claimant fulfils all the conditions of the sale binding on a purchaser.

Provided further that if two or more persons equally entitled make valid claims within the time allowed lots shall be drawn.

1. It reproduces in effect section 155 of the Oudh Act, substituting "before confirmation of the sale" for "before sunset on the day of sale," and adding the last proviso, and is similar to Order 21, rule 88 of the Code of Civil Procedure.

2. The sale must be to a stranger and the claim for pre-emption must be made before confirmation of the sale, and to buy at the sum at which the property was knocked down. Sub-section (2) permits a proprietor or an under-proprietor to claim pre-emption in respect of sale of an under-proprietary or proprietary tenure, as the case may be. Sub-section (3) leaves no option to a court but to allow the claim. The first

<sup>1</sup> *Gur Prasad v. Udai Bhan Pratab Singh*, 1935 A. I. R. Oudh 449=XVI U. D. 514=1935 R. D. 887=157 I. C. 651.

<sup>2</sup> *Atma Dei v. Bakht Narain*, 9 O. C. 185.

<sup>3</sup> *Ujagar Lal v. Dep Com.*, 10 O. C. 30.

<sup>4</sup> *Court of Wards v. Gulsari Lal*, 26 O. C. 381=84 I. C. 377.

proviso thereto gives preference to the claim of a co-sharer over that of a proprietor or under-proprietor. The second proviso repeats the clumsy phraseology of section 155 (3), second proviso, of the Oudh Act. What it means is that the claimant must do all that a bidder at an auction sale has to do after the bid, *e. g.*, pay 25 and 75 per cent within the times mentioned in the Code of Civil Procedure.

**251. (1)** The interest of a tenant holding on special terms in Oudh, of an ex-proprietary tenant, of an occupancy tenant, or of a hereditary tenant in his holding or any part thereof may be sold in execution of a decree for arrears of the rent of such holding and, unless such interest is purchased by the land-holder thereof, the purchaser shall, subject to the provisions of sub-section (3), have the same interest in such holding or such part and be subject to the same liabilities in respect of such holding or such part as the tenant.

(2) Before selling the interest of a tenant in a part only of his holding in accordance with the provisions of sub-section (1), the court executing the decree shall, in accordance with rules made by the Board, distribute the rent of the holding over such part and the remainder of the holding.

(3) When such interest is sold either—

(a) a sub-tenant of such holding ; or

(b) an agricultural or other labourer or a servant of the village community who permanently resides in the village and does not belong to any of the classes mentioned in clauses (c) to (e) or

(c) a person, who is not a proprietor or an under-proprietor in the village and who cultivates land and resides in the village ; or

(d) the land-holder ; or

(e) a person who is a proprietor or an under-proprietor in the village ;

may in the above order of priority, within fifteen days of the date of sale, claim to take such interest at the highest bid :

Provided that where two or more persons belonging to the same class, being a class mentioned in clause (a) or clause (c), claim to take such interest, preference shall be given to the claimant who cultivates the smallest area in the village ; and when two or more such claimants cultivate the same area, preference shall be decided by lot :

Provided further that if two or more persons belonging to the same class, being a class mentioned in clause (b) or clause (e), claim to take such interest preference shall be decided by lot ;

Provided also that if such interest is not claimed by such sub-tenant the landholder may within fifteen days of the sale claim to take such interest on payment of the highest bid together with a sum equal to five per cent. thereon and such claim shall have propriety over any other claim

1. This section is new and introduces the rule as to sale of tenancy interest in execution of a decree for arrears of rent due in respect of the holding.

Sub-section (1) contemplates the possibility of the landholder purchasing his tenant's interest in a holding at such execution sale. If he does not exercise his option or right, a stranger purchaser will stand in the shoes of the tenant as regards the portion purchased by him.

Sub-section (2) enjoins distribution of rent as between a part of a holding to be sold and the rest of the holding before the sale takes effect. Omission to perform this duty will not *per se* invalidate a sale.

Sub-section (3) prescribes the order of pre-purchase on such a sale. The provisos are important. The last proviso should be noted. Where subtenants make no claim, the land-holder may claim within 15 days of the sale, provided he pays the amount of the highest bid *plus* five per cent. thereon. His claim will then have preference over the claim of persons mentioned in sub-clauses (b), (c) and (e) of sub-section (3). The word *the* before *landholder* debars one or some of several landholders from making a claim for purchase or preference.

2. Section 152 of the Oudh Act made the interest of the judgment-debtor in an under-proprietary right liable to sale in execution of a decree for an arrear of rent due in respect of that right. There is no change in that respect. It was held that the lessee under a perpetual hereditary but intransferable lease, not being an under-proprietor, his rights could not be sold in execution of a decree for arrears of rent;<sup>1</sup> they could not be sold in execution of a money decree, and in the last mentioned event the lessee himself might, in fact he was bound to, object to the sale.<sup>2</sup> It was also held that read with section 151 of the Oudh Act, the interest of an under-proprietor could not be sold in execution of a decree for arrears of rent without the decree-holder making an attempt to obtain satisfaction of the decree from his moveable property.<sup>3</sup> The court had to be satisfied that such satisfaction could not be obtained.<sup>4</sup> This will no longer be law.

If the under-proprietor had created a mortgage over his tenure prior to the decree for rent, only the equity of redemption can be sold, the mortgage being valid in view of the provisions of section 248.<sup>5</sup>

<sup>1</sup> *Muh. Abdul Karim Khan v. Nwas Singh*, 12 O. C. 267=3 I. C. 868.

<sup>2</sup> *Mohan Dei v. Balmakund*, VII U. D. (H. C.) 11=1926 R. C. 17=9 R. D. 10=90 I. C. 256.

<sup>3</sup> *Shahzad Kunwar v. Deputy Commissioner*, 1937 A. I. R. Oudh 43=XVII U. D. (H. C.) 205=1936 R. D. 388=1936 O. W. N. 717=164 I. C. 446.

<sup>4</sup> *Surendra Narain Singh v. Lal Bahadur Singh*, 1934 A. I. R. Oudh 59=XV U. D. (H. C.) 89=18 R. D. 70.

<sup>5</sup> *Narotam Das v. Sukhraj Singh*, 3 Luck. 719=VIII U. D. (H. C.) 240=10 L. R. Rev. 85=1928 R. C. 425=116 I. C. 49=12 R. D. 457.

3. The rules made by the Board of Revenue under this section are given below :<sup>1</sup>—

**Rules to give effect to section 251 of the Act.**

*Sale of tenant's interest in his holding.*

**81.** On receiving an application for the execution of a decree by the sale of a tenant's interest in his holding, the court shall value the holding by multiplying the area of the plot or plots comprised in it by the appropriate rates sanctioned for hereditary tenants under the provisions of Chapter VI of the Act. If no such rates have been sanctioned, the court shall determine appropriate rates in the manner laid down in section 103 of the Act.

**82.** The interest to be sold shall ordinarily be valued as follows :

- |   |     |   |
|---|-----|---|
| (a) Hereditary tenants  | ... | ... Six times the valuation of the holding at hereditary rates. |
| (b) Occupancy tenants in Agra   | ... | ... Ten times the valuation at hereditary rates.                |
| (c) Ex-proprietary tenants  | ... | ... Twelve times the valuation at hereditary rates.             |
| (d) Occupancy tenants in Oudh and tenants holding on special terms in Oudh. | ... | ... Fourteen times the valuation at hereditary rates.           |

Provided that if the rent of the holding is very much above or below the valuation at the rates appropriate to the class of tenant, or if for any other reason the court considers the above scale unsuitable, it may value the tenant's interest at such rates as it deems proper.

**83.** If the holding consists of more than one plot, and the decree is, in the opinion of the court, likely to be satisfied by selling the interest in a part only of the holding, the court shall distribute the rent of the holding over the plots constituting it so that the rent allotted to each plot bears to the total rent of the holding the same proportion as the valuation of that plot at sanctioned rates bears to the total valuation of the holding at such rates. If the interest of the tenant is to be sold in lots, the court shall group the plots of the holding into lots, of which the value of the interest of one lot calculated in accordance with rule 82 shall be not less than the amount due to the decree-holder under the decree in execution of which such interest is being sold :

Provided that no lot shall be formed by splitting up any existing field, and that the plots formed shall be as compact as possible.

**84.** In addition to the particulars required by sub-rule (2) of Rule 66 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908, the sale proclamation shall mention the  *khasra*  numbers, the area and the rent of the holding

<sup>1</sup> These rules were published in the U. P. Gazette, dated 13th July, 1940.

or part thereof which is to be sold, and if the holding is to be sold in lots, the *khassra* numbers, area and rent of each lot.

85. The sale shall be held either in open court or at the place where the holding is situated, as the court may direct.  
Place of sale.

86. In conducting the sale the court shall follow the procedure relating to sales of immovable property in execution of a decree prescribed in Order XXI of the First Schedule of the Code of Civil Procedure, 1908.  
Procedure of sale

87. As soon as the order confirming the sale has become final, the court shall order that the tenant be ejected from, and the purchaser be put in possession of, the holding, or portion of the holding of which the tenant's interest has been sold. Unless the purchaser is the landholder, he shall have the same interest in the holding or part, of which the interest has been purchased by him, as the tenant had; and the purchaser shall be liable to pay for the holding or part thereof the rent specified in the proclamation of sale, and the court shall order that the village records be amended accordingly.  
Procedure after sale

252. (1) Instead of selling the interest of a tenant in the whole or a part of his holding the court executing a decree for arrears of rent may lease such whole or part for a period which shall not exceed six years to any person who pays into court the amount of such decree.  
Lease in execution of a decree for arrears of rent.

(2) If the whole of the tenant's holding is leased under the provisions of sub section (1) the lessee shall be liable to pay to the landholder the rent previously payable by the tenant for the holding, and if a portion only of such holding is so leased the lessee shall be liable to pay to the landholder such portion of the rent previously payable by the tenant for such holding as may be determined by the tahsildar in accordance with rules made by the Board and the tenant shall be liable to pay the remainder of such rent.

(3) In addition to depositing the amount specified in sub-section (1) a person obtaining a lease of land under the provisions of this section shall deposit an amount equal to the rent annually payable by him under such lease and such amount shall be deemed to be deposit made under the provisions of section 137 of the rent due by him in respect of the last year for which he is entitled to hold under such lease or, if he surrenders or abandons such land or is ejected therefrom, before the expiry of such lease, in respect of the last year for the rent of which he is liable.

(4) Notwithstanding anything in this Act, a person obtaining a lease under the provisions of this section shall be a non-occupancy tenant.

(5) On the expiry of the term of a lease given under the provisions of this section or on ejectment of the lessee or on his surrender or abandonment of such land, the same rights shall, subject to the provisions of sub-section (6) regarding surrender and abandonment, accrue to the tenant in such land as he possessed before the granting of such lease.

(6) At any time during the period of a lease given under the provisions of this section the tenant may in accordance with the provisions of sections 82 to 88 surrender or abandon the holding or the portion leased and during the period of such lease the tenant shall for the purposes of sections 33 to 38 be deemed to possess an interest in the portion leased.

1. This is new and makes a useful provision against total loss to a tenant by ejectment and for ensuring the realisation of land-holder's dues. The court executing the decree may act and it may let the land. The maximum duration of the lease is six years.

2. A lease can be granted only when the prospective lessee has deposited in court the amount of the decree. Suppose a part of it has been satisfied, will the deposit of the balance amount to payment of "the amount of such decree" ?

Sub-section (2) indicates the extent of the lessee's liability for rent as it falls due (after the lease).

Sub-section (3) fixes another amount to be deposited by the lessee at the time of or soon after the lease, which will be deposit for rent in advance in respect of the last year of his lease or of the last year before abandonment or surrender by him or of his ejectment. As such lessee is only a non-occupancy tenant, he may be ejected as such or surrender or abandon as such a tenant can.

Sub-section (6) permits the tenant to surrender or abandon his holding while a lease granted to another under sub-section (1) is outstanding. The lessee under sub-section (1) has to give up the land leased on the expiration of the term of the lease or when he is ejected or surrenders or abandons unless the tenant himself has beforehand surrendered or abandoned his interest in the holding, in which case the duration of the lease will be until such surrender or abandonment.

Should the tenant die during the period of the lease his interest will devolve as indicated in sections 33 to 38 and on the termination of the lease the heir ascertained under those sections will take the land that had been leased.

3. Rules made by the Board of Revenue under this section are given below :<sup>1</sup>—

**Rules to give effect to section 252 of the Act.**

*Lease of tenant's holding.*

**88.** On receiving an application to execute a decree by leasing the holding of a tenant under the provisions of section 252 of the Act, the court shall value the holding by multiplying the area of the plot or plots comprised in it by the appropriate rates sanctioned for hereditary tenants under the provisions of Chapter VI of the Act. If no such rates have been sanctioned, the court shall determine appropriate rates in the manner laid down in section 103 of the Act.

**89.** If the court considers that it is necessary to lease a part only of the holding, the rent of such part shall be determined so that it bears to the rent of the holding the same proportion as the valuation of such part bears to the valuation of the holding :

Provided that such part shall not be formed by splitting up any existing field, and that it shall be as compact as possible.

**90.** (1) If the court decides that a holding or part thereof should be leased, it shall cause a proclamation to be issued of the intention to lease the holding or part thereof as aforesaid, notice of which shall be given to the decree-holder and judgment-debtor.

(2) Such proclamation shall state the time and place at which offers to take on lease the holding or part thereof will be received, and shall specify as fairly and accurately as possible :

(a) the name and address of the decree-holder and judgment-debtor ;

(b) the amount due under the decree ;

(c) the name of the village, mahal, *thok* or *patti*, the *khassra* numbers, the area, the rent and the valuation at appropriate sanctioned rates of the holding, and if a portion only of the holding is to be leased, the same particulars with regard to such portion ;

(d) the fact that, under the provisions of section 252 of the Act, the intending lessee must deposit the whole of the decretal amount before the lease is sanctioned, and that after the lease has been sanctioned, he shall pay annually the rent previously payable by the tenant, or (if a portion of the holding only has been leased) such portion of the rent previously payable by the tenant as the court may determine ; and

(f) any other information which the court considers material for an intending lessee to know in order to judge the value of the holding.

**91.** Every proclamation of the intention to lease a holding under section 252 of the Act shall be made and published as nearly as may be in the manner prescribed by sub-rule (2) of Rule 54 of Order XXI of the Code of Civil Procedure, 1908.

<sup>1</sup> These rules were published in the U. P. Gazette, dated 13th July, 1940.



**92.** The Court shall, at the date and time fixed in the proclamation, receive offers for taking the holding on lease, and in deciding the period for which, and the person to whom, the holding or part thereof should be leased, it shall take into consideration the wishes of the parties. If the parties do not agree, the court shall give the lease to such person as it considers best suited to carry out his obligations as lessee.

**93.** Before an offer to take the holding on lease is sanctioned by the court, the intending lessee shall pay into court the amounts mentioned in sub sections (1) and (3) of section 252 of the Act. If those amounts are not paid into court in full within fifteen days the proceedings shall be cancelled.

**94.** When the lease of the holding has been sanctioned, the court shall—

(a) put the lessee in possession of the holding or part thereof which has been leased ;

(b) order that the lessee be recorded as a non-occupancy tenant of the holding or part thereof at the rent and for the period determined by the court under these rules ;

(c) pay to the decree-holder the amount deposited by the lessee under sub-section (1) of section 252 of the Act ; and

(d) enter satisfaction of the decree.

**253.** Subject to the provisions of this Act, the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to suits and other proceedings under this Act.

1. It reproduces section 231 of the Agra Act of 1926 as read with section 29 (2) of the Limitation Act. Section 5 of the Limitation Act does not apply to suits. But this section has made it applicable to suits under this Act.

2. Section 5.—This gives effect to *Hem Chandra v. Sheo Bux*.<sup>1</sup> Where a suit for ejectment is brought against a dead person within limitation but his heir is impleaded after the expiration thereof the suit is out of time.<sup>2</sup> A suit filed beyond time may for good cause shown. *e. g.*, imprisonment, be taken to be within time.<sup>3</sup>

Sections 4, 5, 12, 14 and 15 of the Limitation Act, applied to all proceedings under the Oudh Act.

The date on which a cause of action arose was excluded.<sup>4</sup>

<sup>1</sup> IV U. D. 321=6 R. D. 51 and overrides *Bhagwan Singh v. Sarju Dei*, IX U. D. 76=9 L. R. Rev. 256.

<sup>2</sup> *Giri Lal v. Dharam Singh*, IV U. D. 324=6 R. D. 517 but see *Santu v. Hazari Lal*, X U. D. 178=13 R. D. 622.

<sup>3</sup> *Gun Koeri v. Gaundh Bind*, XII U. D. 282=15 R. D. 697. See as regards appeals *Sudama Rai v. Bisheshwar Prasad*, XV U. D. (H. C.) 311=18 R. D. 706,

<sup>4</sup> *Tajammul Husain v. Kandhai Lal*, B. R. 5 of 1913.

Section 6 does not apply. A suit brought by a person three years after he attained majority is not barred by that section, provided of course that his suit is in time under the law applicable.<sup>1</sup> Nor does section 7, and *Gur Prasad v. Gokaran Nath*,<sup>2</sup> is no longer law.

Section 12.—This gives effect to *Atal Singh v. Kurey*.<sup>3</sup>

Section 14 does not apply to appeals,<sup>4</sup> unless appeals come under other proceedings.

Where in a suit for rent by a fixed-rate tenant a plea of payment in good faith to the landlord is set up, and is held to be good after the latter has been impleaded, and an appeal against the decision is dismissed, in a subsequent suit for division by the tenant in which the landlord is impleaded, the tenant is entitled to the extra time between the denial of right by the landlord in the first litigation and the date of final decision in appeal.<sup>5</sup> Where a plaintiff honestly entertains a doubt as to whether his remedy lies in a Civil or Revenue Court, and he resorts to the civil court which on a statement of the parties that it is a revenue court suit, returns the plaint for presentation to the proper court, there is no want of good faith, and the plaintiff is entitled to the benefit of section 14, when presenting the plaint in the revenue court.<sup>6</sup> The previous proceeding must have been based on the same cause of action and in a competent court. A correction of *jamabandi* case is not founded on the same cause of action as one for ejectment.<sup>7</sup> A plaintiff seeking to exclude a certain time under section 14 must satisfy the court that that time was spent in diligently prosecuting the previous proceeding.<sup>8</sup>

Section 18.—This gives effect to *Jai Singh v. Bankhandi*.<sup>9</sup>

Section 23 does not apply. This gives effect to *Maluk Chand v. Yusu Ali*.<sup>10</sup>

Section 23 was applied in Oudh in a suit under section 109 (c) for compensation for illegal ejectment, (now under section 183),<sup>11</sup> and in a suit for ejectment for illegal transfer or sublease under section 109 (2) Oudh Act, (now section 171).<sup>12</sup>

<sup>1</sup> *Karan Singh v. Charan Singh*, XV U. D. 463=16 L. R. Rev. 40.

<sup>2</sup> 11 O. C. 118.

<sup>3</sup> XIV U. D. 257=14 L. R. Rev. 532.

<sup>4</sup> *Sudama Rai v. Bisheshar Prasad*, XV U. D. (H. C.) 311=18 R. D. 706.

<sup>5</sup> *Nar Singh Rai v. Radha Govind Singh*, XIV U. D. 68.

<sup>6</sup> *Ram Rati v. Phool Singh*, 1932 A. L. J. 421.

<sup>7</sup> *Bhagwant Singh v. Bhagol*, XIV U. D. 320=14 L. R. Rev. 625.

<sup>8</sup> *Sundra v. Bisheshar*, XIII U. D. 68.

<sup>9</sup> III U. D. 509=4 R. D. 509.

<sup>10</sup> 2 L. R. Rev. 160=7 R. and Cr. L. J. 209.

<sup>11</sup> *Kashi Nath v. Sukh Dei*, B. R. 16 of 1892, *Tajammul Husain v. Kandhai*, B. R. 3 of 1913.

<sup>12</sup> *Bhaskhari v. Court of Wards*, B. R. 2 of 1914—I U. D. 178; *Lal Man v. Sheo Ratan Singh*, B. R. 24 of 1891; *Bishu Nath Prasad v. Ramkhelawan*, VII U. D. 90=7 L. R. Rev. 171.

A suit for ejectment for illegal subletting was in time if brought while the sub-letting continued.<sup>1</sup>

Section 23 was held not to apply when a tenant planted a tree in his holding, as the cause of action arose when tree was planted.<sup>2</sup>

Section 28 is not applicable. But section 45 (r) extinguishes the tenancy of a tenant whose right to recover possession is barred by time.

Art. 144 Limitation Act was held to be inapplicable.<sup>3</sup>

**254.** The suits and other proceedings specified in the Fourth Schedule shall be instituted within the time prescribed in that Schedule for them respectively.

Limitation in cases under the Act

This reproduces section 232 of the Agra Act of 1926 and corresponds to section 3 of the Limitation Act.

Court may dismiss a suit, appeal or application filed beyond the period of limitation, but to determine whether it is beyond limitation, sections 4, 9 to 18 and 22 may be called in aid.<sup>4</sup>

**255.** The court-fees payable in suits and on applications under this Act shall be as specified in the sixth column of the Fourth Schedule.

Court-fees payable.

This reproduces in effect section 233 of the Agra Act of 1926.

Appeals are either suits or applications. In some places in the sixth column of Schedule IV, the amount of court-fee is indicated "as in the Court-fees Act," and hence that Act must be referred to. In appeal from a decision under section 61 declaring the status of a person alleged to be a tenant, the court-fee is eight annas as in Schedule II, Art. 5 of that Act, and not Rs. 10, as in an appeal from a declaratory decree.<sup>5</sup>

### *Powers of courts.*

**256. (1)** The Board may sit for the disposal of cases under this Act at the headquarters of any district.

Place of sitting of revenue court.

**(2)** Every other revenue court shall sit for the disposal of such cases as provided in section 189 of the United Provinces Land Revenue Act, 1901.

This reproduces section 262 of the Agra Act of 1926, which reproduced section 192 of the Act of 1901.

<sup>1</sup> *Lal Man v. Sheo Ratan*, B. R. 24 of 1891.

<sup>2</sup> *Bhagwan Din v. Court of Wards*, VI U. D. 134=5 L. R. Rev. (O.) 97.

<sup>3</sup> *Nimar v. Rang Nath*, XIX U. D. 196=1938 R. D. 602.

<sup>4</sup> See *Dwarka Das v. Than Singh*, XI U. D. 66, 143=11 L. R. Rev. 86=14 R. D. 248

<sup>5</sup> *Ratan Singh v. Khem Karan*, 40 All. 358=16 A. L. J. 167=44 I. C. 608.

**257.** An assistant collector of the second class shall have power to dispose of all suits specified in serial nos. 1 to 6 inclusive, of group A of the Fourth Schedule, in which the value of the subject-matter does not exceed two hundred rupees, and except as otherwise provided in this Act a tahsildar shall have power to dispose of all applications included in group C of that Schedule.

1 This reproduces in effect section 234 of the Agra Act of 1926, emphasizing the powers of a Tahsildar to dispose of all applications in Group C, and corresponds to section 113 of the Oudh Act. Section 234 of the Act of 1926 corresponded to section 171 of Act II of 1901.

2. In Oudh, a suit for arrears of rent could be coupled with one for determination of rent under section 127(1) of the Oudh Act, and under section 127(2) a decree for ejectment could also be passed in such a suit. A Second Class Assistant Collector could not try a suit for determination of rent (under section 108(3a)) and a suit for ejectment (under section 108(4)). Hence a suit for arrears of rent (section 108(2)) and section 127 was cognisable by a First Class and not a Second Class Assistant Collector,<sup>1</sup> as section 15, Code of Civil Procedure, was deemed inconsistent with section 113 of the Oudh Act. Now, in spite of section 15, Civil Procedure Code, a suit for arrears of rent of a value not exceeding Rs. 200 may be tried by a Second Class Assistant Collector. But a suit for determination of rent and a suit or proceeding for ejectment are triable by an Assistant Collector of the First Class. Hence the ruling cited above will hold good but not for precisely the same reasons as were advanced by the learned judges.

An Assistant Collector of the Second class has jurisdiction only in suits upto the value of rupees two hundred which are entered as serial numbers 1 to 6 in Group A of the Fourth Schedule i. e., suit for arrears of rent etc. His jurisdiction also extends to all applications entered in Group C.

**258.** An assistant collector of the first class shall have power to dispose of all suits specified in groups A and B of the Fourth Schedule.

This reproduces section 235 of the Agra Act of 1926 which corresponded to section 172 of the Act of 1901, and corresponds to section 114 of the Oudh Act.

**259.** An assistant collector in charge of a sub-division shall have power to dispose of all applications specified in group D of the Fourth Schedule.

This reproduces section 236 of the Act of 1926.

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<sup>1</sup> *Fazal Muhammad Khan v. Muhammad Habib*, 1935 A. I. R. Oudh 251=XVI U. D. 143=1935 O. W. N. 242=1935 R. D. 86=154 I. C. 91.

**260.** A collector shall have all the powers which may be exercised under this Act by an assistant collector in charge of a sub-division and in addition shall also have power to dispose of the applications specified in Group E of the Fourth Schedule.

1. This reproduces the first part of section 237 of the Agra Act of 1926 which corresponded to section 173 of the Act of 1901. It corresponds to sections 111 and 115 of the Oudh Act.

2. A collector may try any suit triable by an Assistant Collector of the First Class. This was the view in Oudh.<sup>1</sup>

**261.** The Provincial Government may confer on an assistant collector of the first class all or any of the powers of a collector under this Act, and such assistant collector shall exercise such powers in respect of such cases or classes of cases as the collector may direct.

1. This reproduces in effect section 238 of the Agra Act of 1926.

2. See for instance, U. P. Gazette, dated 9th May, 1940, Part 1, page 284 Notification No. 329/1 33 for such conferment of powers.

**262.** (1) Notwithstanding anything in section 15 of the Code of Civil Procedure, 1908—  
Court in which proceedings to be instituted

(a) all suits specified in serial nos. 1 to 6, inclusive, of group A, of the Fourth Schedule in which the value of the subject-matter does not exceed two hundred rupees, and all applications included in group C of that Schedule shall be instituted in the court of the tahsildar ;

(b) all suits under serial nos. 7 to 16, inclusive, of group A of the Fourth Schedule and all other suits included in that group in which the value of the subject-matter exceeds two hundred rupees, and all suits included in group B of that Schedule, and all applications included in group D of that Schedule, shall be instituted in the court of the assistant collector in charge of the sub-division :

Provided that if there is no assistant collector in charge of the sub-division, all such suits and applications shall be instituted in the court of the collector :

Provided also that the collector may by written order direct that any class of suits or applications referred to in this sub-section shall be instituted in the court of any other assistant collector competent to try them under the provisions of this Act.

<sup>1</sup> *Ram Nath v. Raghu Nath Singh*, VI U. D. 128—5 L. R. Rev. (O.) 96—8 R. D. 158.

(2) All applications included in Group E of the Fourth Schedule shall be made in the Court of the Collector :

(3) All applications included in Group F of the Fourth Schedule shall be made in the court empowered to entertain them under the provisions of this Act.

This reproduces in effect section 239 of the Act of 1926.

Certain applications, mentioned in Group E, are reserved exclusively for the court of the Collector, *viz.*, for acquisition of land under section 54, for restoration of the land so acquired, under section 54(4), for remission of revenue under section 91(4), and for collection of rent *or canal dues* in case of a general refusal to pay the same, under section 154. (The words in italics were added by the U. P. Tenancy Amendment Act I of 1940.)

### *Appeals*

**263.** No appeal shall lie from any decree or order passed by any court under this Act except as provided in this Act.

Appeal to be as allowed by Act.

1. This reproduces section 240 of the Act of 1926, which reproduced in effect section 175 of the Act of 1901.

2. This applies to all appeals filed after the commencement of the Act.<sup>1</sup>

This section will not prevent an appeal under the Letters Patent,<sup>2</sup> or an appeal to the Privy Council. It applies to all appeals whether to civil or revenue courts.<sup>3</sup>

**264.** Except as provided by section 286, an appeal shall lie to the collector from every decree of an assistant collector of the second class.

Appeal from decree of assistant collectors of the second class.

1. This reproduces in effect section 241 of the Agra Act of 1926 which corresponded to section 176(a) of the Act of 1901, and corresponds to section 116(a) of the Oudh Act.

2. Orders are not appealable now in Oudh as they were under section 116(a).<sup>4</sup> They were not appealable under the Agra Act.

3. Every decree of an Assistant Collector of the 2nd class is appealable either to the Collector or to the Civil Court ; to the latter when a question of proprietary title has been raised at the trial, an issue thereon taken and referred to the civil court, and again raised in appeal. The collector cannot, when hearing an appeal from the decree in a connected

<sup>1</sup> See *Zamin Ali v. Genda*, 26 All. 375=1 A. L. J. 105.

<sup>2</sup> *Zamin Ali v. Genda*, 26 All. 375=1 A. L. J. 105=24 A. W. N. 48.

<sup>3</sup> *Kirpa Devi v. Ram Chandar Sarup*, 40 All. 219=16 A. L. J. 231=43 I. C. 531

=4 R. and Cr. L. J. 58.

<sup>4</sup> See *Binda v. Muh. Mehdi Ali Khan*, V U. D. 67=3 L. R. Rev. 213.

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suit for arrears of rent, modify the decree in a case in which no appeal has been preferred to him <sup>1</sup>

**265.** (1) An appeal shall lie to the district judge from the decree of an assistant collector of the first class or of a collector in any of the suits included in Group A of the Fourth Schedule in which—  
Appeal from decree of assistant collectors of the first class or of collector to commissioner or civil court

- (a) the amount or value of the subject-matter of the appeal exceeds fifty rupees or
- (b) the liability to pay rent or the amount of rent annually payable has been in issue in the court of first instance, and is in issue in the appeal; or
- (c) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the court of first instance, and is in issue in the appeal or
- (d) in any suit under the provisions of Chapter XII in which the liability to pay revenue or rent or the amount of the revenue or rent annually payable has been in issue in the court of first instance, and is in issue in appeal :

Provided that, when the amount or value of the subject-matter of the suit exceeds five thousand rupees the appeal shall lie to the High Court, or the Chief Court as the case may be.

(2) Subject to the provisions of sub-section (3) of this section and of section 202, an appeal shall lie to the commissioner from the decree of a collector or of an assistant collector of the first class in all suits included in group B of the Fourth Schedule.

(3) An appeal shall lie to the district judge from the decree of an assistant collector of the first class or of a collector in all suits, in which a question of jurisdiction has been decided and is in issue in the appeal :

Provided that when the amount or value of the subject-matter of the suit exceeds five thousand rupees the appeal shall lie to the High Court or the Chief Court, as the case may be.

1. This corresponds to section 242 of the Agra Act of 1926 (see also s. 243) and to section 119 of the Oudh Act. [See also s. 116(b)].

Section 242 of the Act of 1926 was in effect section 177 of the Act of 1901.

Sub-section (1) provides for an appeal to the District Judge from the decree of an Assistant Collector of the first class or of a Collector in a suit included in Group A, provided the conditions laid down in one of the clauses (a) to (d) exist, or the question mentioned in sub-section (3) is in issue or is involved.

<sup>1</sup> *Ganga Singh v. Dwarka Prasad*, XVIII U. D. 5=1937 R. D. 14.

In sub-section (1) (a) the appealable limit is Rs. 50 instead of Rs. 200 and the valuation must be of the subject matter of the *appeal* not and of the suit.<sup>1</sup>

In sub-section (1) (b) the addition of the words "liability to pay rent or" should be noted. The words "by a tenant" have been omitted.

In sub-section (1) (d) *liability to pay* has been added. The liability must arise in a suit under Chapter XII, *i. e.*, for profits, revenue etc.

2. Where the plaintiff sued for arrears of rent with a preliminary request that the rent be determined, he was not allowed in appeal to withdraw his claim for arrears of rent, so as to have a right of appeal to the commissioner,<sup>2</sup> because a claim for determination of rent was in such a case ancillary to the relief for the arrear of rent.<sup>3</sup> If such a joinder is permissible under the present Act, which does not appear to be the case (*vide* section 94), the ruling will hold good.

The added words "liability to pay rent" will embrace a relief for a declaration that the defendant is liable to pay rent because he is a tenant, or under-proprietor or permanent lessee as defined in the Act, and incidentally that the defendant has such a status, which falls under section 61 and is item 5 of Group B. To reconcile the two enactments, one must confine the relief to a matter which does not fall within the words "the class to which the tenant belongs" of section 55 (2) (a). Even so section 60 must be borne in mind, a suit under which is also in Group B.

We must therefore exclude suits under sections 59 to 61 from section 265 (b). The words quoted will then be confined to suits by or against persons who allege themselves to hold rent-free or who are alleged to hold not as proprietors but as under-proprietors.

3 **Decree.**—See section 2 (2), C. P. C. for meaning. Orders which are not decrees, passed by an Assistant Collector of the first class, are appealable to the District Judge,<sup>4</sup> as an appeal from the decree would lie to him under section 265; *vide* section 271.

4. **Group A** comprises 16 items, of which six relate to rent or canal dues, two to ejectment and injunction and the rest to suits under Chapters XII and XIII.

5. **C1. (a)**—Suits in Group A, items 1 to 6, of which the value does not exceed Rs. 50, are triable by Assistant Collectors of the 2nd class, but if tried by a first class officer, the decisions therein are final, in cases where the value does not exceed Rs. 50. Other suits in that group are triable by Assistant Collectors of the first class irrespective of value but if of less value than Rs. 50 the decree is final, unless

<sup>1</sup> This render useless the ruling in *Raghu Raj Singh v. Har Govind*, 52 All. 83—1929 A. I. R. All. 845—1930 A. L. J. 215—13 R. D. 793.

<sup>2</sup> *Muhammad Mehdi v. Bachecha Singh*, XII U. D. 239

<sup>3</sup> As held in *Kalika v. Ram Suchit*, 1925 A. I. R. Oudh 499—2 O. W. N. 499—VI U. D. (H. C.) 482.

<sup>4</sup> *Contra*, under the Act of 1901, *Muhammad Yusuf v. Hasan Fatima*, 2 A. L. J. 130—25 A. W. N. 55.



sub-section (3) applies. In no such case does an appeal lie to the Collector (or any revenue court). Decrees in all suits in that Group are appealable to the District Judge, if the value of the subject-matter of the appeal exceeds Rs. 50.

If no objection to the forum of appeal is taken before the Commissioner or in the memo. of appeal to the Board, it is too late to urge it at the hearing.<sup>1</sup> Where no objection to an appeal being heard by a District Judge was taken before him, the High Court allowed the plea to be urged before it.<sup>2</sup>

6. *Amount or value of the subject-matter of the appeal.*—The words in italics did not occur in the Act of 1926 and it was held that the reference was to the amount or value of the subject-matter of the suit, and not of the decree.<sup>3</sup> The valuation put upon the plaint is binding on the plaintiff. On being defeated in the first Court he cannot by increasing the valuation to over Rs. 50 gain a right of appeal.<sup>4</sup>

The value fixed by section 7 (xi) (cc) Court-Fees Act determines the value of an appeal, and if such value is less than Rs. 50 no appeal lies to the District Judge.<sup>5</sup>

A suit for profits not exceeding Rs. 200 was decreed while the Act of 1926 was in force. Remedy against the decree was by revision under section 252 of that Act and not by appeal under section 265 (1) of this Act.<sup>6</sup>

Revision in a suit for profits exceeding Rs. 50 in value lies to the High Court under section 276 and not to the Board under section 275.<sup>7</sup>

<sup>1</sup> *Bhikam Singh v. Bhajan Singh*, III U. D. 192=4 R. D. 38, but see *Nathi Lal v. Mithola*, 6 L. R. Rev. 73=VI U. D. 369=1924, R. C. 580=8 R. D. 274; *Raja Ram Rai v. Ramyad*, VI U. D. 440=6 L. R. Rev. 164=1925 R. C. 306=8 R. D. 9.

<sup>2</sup> *Daulatia v. Hargovind*, 43 All. 188=18 A. L. J. 923=1921 A. I. R. All. 290=IV U. D. 800=57 I. C. 206=2 U. P. L. R. 289=6 R. and Cr. L. J. 303=6 R. D. 382.

<sup>3</sup> *Raghu Raj Singh v. Har Govind*, 52 All. 88=1930 A. L. J. 215=119 I. C. 3=1919 A. I. R. All. 845=13 R. D. 793 (as the word *which* referred to suit and not to appeal); *Anant Singh v. Bhagwan Singh*, 52 All. 442=1930 A. L. J. 336=1930 A. I. R. All. 97=126 I. C. 365=14 R. D. 98.

<sup>4</sup> So held also in *Nandan Singh v. Dobi Din*, 12 A. L. J. 933=25 I. C. 975; *Banko Lal v. Pearey Lal*, 12 Rev. and Cr. L. J. 228=1926 R. C. 333=VII U. D. (H. C.) 153=7 L. R. Rev. 265=10 R. D. 559; *Radha Prasad v. Pattan*, 15 All. 363; *Raghu Nath Naik v. Sirtaj Lal*, 1934 A. L. J. 708=1934 A. I. R. All. 825=XV U. D. (H. C.) 41=15 L. R. Rev. 246=18 R. D. 222=18 R. D. 222=3 A. W. R. 674.

<sup>5</sup> *Raghu Nath Naik v. Sirtaj Lal*, 1934 A. L. J. 708=1934 A. I. R. All. 825=XV U. D. (H. C.) 41=15 L. R. Rev. 246=1934 A. L. R. 200=3 A. W. R. 674=18 R. D. 222.

<sup>6</sup> *Bal Mukand v. Karan Singh*, 1941 R. D. 306

<sup>7</sup> *Navin Chandra v. Radhey Shyam*, 1941 R. D. 340.

7. Cl. (b).—**Liability to pay rent or the amount of rent annually payable.**—Liability to pay rent or the rate of rent payable annually, and not merely the actual amount of money due at any time,<sup>1</sup> must have been agitated in the Court of first instance, and must be in issue in the appeal. Where in answer to a suit for rent the defence was a custom by which rent was payable of the culturable portion only, and that during the year in suit, a less portion of the land than that for which rent was claimed had been culturable, it was held that this raised the question of the rate of rent.<sup>2</sup>

The test is whether the decision sought to be appealed would merely affect a particular year, or whether it would supply a plea of *res judicata*, if not appealed against, for all succeeding years as between the landlord and tenant.<sup>3</sup> In suits under sections 224, 230 and 231 which are in Group A, it is possible that a dispute between the co-sharers—to which the tenant is not a party—may arise as to the rent annually payable by a tenant. As the section stands, such dispute, if also the subject of appeal, can be decided by the District Judge.<sup>4</sup> Rent in this clause does not include revenue.<sup>5</sup>

Liability to pay rent gives effect to *Beni Prasad Kuar v. Babu Ram*.<sup>6</sup> The following case must, however, be considered with this. Plaintiffs, as zamindars, sued the defendants for the rent of land held by them. The defence was that whatever the rent might be, the defendants were entitled to retain it in lieu of interest payable to them under the terms of a mortgage given by the predecessor in title of the plaintiffs. It was held that no appeal lay to the District Judge inasmuch as the rent payable by the tenant was not in issue in the suit.<sup>7</sup> Query: whether this is good law now, as the words "by the tenant" have been omitted.

8. Clause (c)—**Amount of rent payable separately, etc.**—That is, there must have been a dispute in the Court of first instance as to the amount of rent payable to one of several co-sharers, and such dispute must be continued in the Court of appeal. It is not necessary that such dispute should have arisen between the co-sharers. It may have arisen between a co-sharer and the tenant. For instance, a co-sharer, who may separately collect his share of the rent payable by a tenant, sues a tenant claiming his share of the rent. The latter pleads that a less amount is payable on such share. If this contention is raised also in the grounds of appeal, the matter is appealable, and to the District Judge or the High Court, as the case may be.

<sup>1</sup> *Radha Prasad v. Pergash*, 13 All. 193.

<sup>2</sup> *Radha Prasad v. Mathura*, 14 All. 50=11 A. W. N. 219

<sup>3</sup> *Mohib Ali v. Martin*, 16 All. 51=13 A. W. N. 204 ; *Deo Charan v. Beni* 21 All. 247.

<sup>4</sup> *Bhikey v. Jawahir*, II U D. 708.

<sup>5</sup> *Tilakdhari v. Soghra*, 18 All. 303.

<sup>6</sup> 28 All. 23=26 A. W. N. 75.

<sup>7</sup> *Deo Charan v. Beni*, 21 All. 279=19 A. W. N. 47.

9. **Clause (d)**—The expression “liability to pay revenue or rent or,” has been added. The question of liability to pay revenue will arise when the defendant in a suit under the provisions of Chapter XII pleads that he is not liable to pay revenue at all, as he holds revenue-free or as a tenant.<sup>1</sup> Whether the suit be for arrears of revenue or profits, i.e., in any suit under Chapter XII, if the amount of the revenue payable annually has been in dispute in the first court and is in issue in the appeal, an appeal lies to the District Judge. In suits under Chapter XII, such a dispute will arise by the defendant alleging that the rate at which the arrears are claimed is not the true rate, but that a lower rate is. In suits under sections 230 and 231, the question will arise when the lambardar or the co-sharer claims credit for Government revenue at a higher rate than that admitted or allowed by the plaintiff. The point to bear in mind is that a right of appeal is conferred only when the liability to pay revenue or the rate of revenue payable annually is concerned. If there is no such dispute, a dispute about the amount of revenue claimed will not give a right of appeal.<sup>2</sup> In suits under Chapter XII an appeal lies to the District Judge, irrespective of value, when the condition mentioned in clause (d) exists, and a right of appeal does not depend upon any of the conditions mentioned in clauses (a) to (c).

Whether certain persons are liable to pay the revenue fixed under sections 78 and 92, Land Revenue Act, is covered by clause (d).<sup>3</sup>

10. **Sub-section (2)**—Subject to the provisions of sub-section (3).—That is, where a question of proprietary title is raised in a suit under Group B, at the trial, an issue thereon taken and referred to the Civil Court, and again raised in appeal, an appeal will lie to the Civil Court, otherwise it will be within the exclusive jurisdiction of the Revenue Courts.

**And of section 202.**—That is, appeals from decrees and orders under Chapter IX except those under sections 198 and 199 are governed not by this Act, but by Chapter X of the Land Revenue Act.

**Decree of Collector.**—Decrees of Collectors are, as to the right of appeal to Revenue Courts, placed in the same category as decrees of Assistant Collectors of the first class, the *forum* of appeal being the Commissioner.

This sub-section is not intended to apply to appellate decrees of Collectors which are provided for by section 266. Decrees of Collectors and first class Assistant Collectors in suits under Group B are appealable in the same way and to the same courts, revenue and civil.

<sup>1</sup> *Mahender Man Singh v. Badri*, 1939 A. L. J. 489=1939 A. I. R. All. 433=1939 R. D. 367.

<sup>2</sup> *Muhammad Yusuf Ali Khan v. Shiam Kunwar*, 1938 A. L. J. 3=1938 A. I. R. All. 135=1938 R. D. 144.

<sup>3</sup> *Mahendra Man Singh v. Jagan Nath*, XV U. D. 189=15 L. R. Rev. 267. *Pirey Lal v. Amari Khatoon*, 1935 A. I. R. All. 753=XVI U. D. 845=1935 R. D. 301, 342 seems to be no longer law.

A suit under section 172(a) is in Group A,<sup>1</sup> but a suit under section 171 is in Group B.<sup>2</sup>

11. When an *ex parte* decree is passed after proper service, the defendant's remedy is not an appeal but an application for restoration,<sup>3</sup> but if without proper service he may appeal.<sup>4</sup>

A first appeal though time-barred should not be dismissed without hearing the appellant.<sup>5</sup>

An appellate court before receiving additional evidence should record its reason in writing.<sup>6</sup>

12. Sub-section (3).—District Judge.—A Subordinate Judge in temporary charge of the office of District Judge has power to take up and hear a revenue appeal.<sup>7</sup> A District Judge can transfer an appeal under the Tenancy Act to a Subordinate Judge.<sup>8</sup>

In all suits—That is, sub-section (3) applies to all suits, except those under Chapter IX. If in an ejectment suit, the defendant pleads against the jurisdiction of the Court, an appeal will lie to the Civil Court.

13. Question of jurisdiction.—The question should have been decided. It should have been raised and there should be an express decision about it.<sup>9</sup> The mere fact that the jurisdiction of the Court was objected to, and the Court disposed of the suit on the merits without saying anything about the plea of jurisdiction, is not sufficient.<sup>10</sup> So if the plea of jurisdiction is withdrawn so that no issue as to it is framed or decided, an appeal does not lie to the District Judge.<sup>11</sup> If a plea was taken and not proved by counsel, and the Court decides in favour of its jurisdiction, it decides a question of jurisdiction.<sup>12</sup> If there is a decision

<sup>1</sup> *Contra*, under the Act of 1901 *Dina v. Har Kishan*, 13 A. L. J. 302.

<sup>2</sup> *Lachman Das v. Nubi Buksh*, 31 All. 109.

<sup>3</sup> *Fayaz Ali v. Muh. Yunis Khan*, 1 U. D. 320.

<sup>4</sup> *Lal Bahadur v. Toti*, 11 U. D. 2=2 R. and Cr. L. J. 107.

<sup>5</sup> *Maharaja of Visianagram v. Jageshar Singh*, 11 U. D. 356, 138=3 R. D. 11, 236.

<sup>6</sup> *Khunni Lal v. Ram Dial*, 11 U. D. 432.

<sup>7</sup> *Rahmat Ali v. Abdullah*, 23 All. 453=21 A. W. N. 129.

<sup>8</sup> *Afzal Shah v. Muh. Abdul Karim*, 37 All. 232=29 I. C. 633=5 R. and Cr. L. J. 13.

<sup>9</sup> *Chhedi Singh v. Ram Jag*, XV U. D. 329.

<sup>10</sup> *Zamin Ali v. Genda*, 26 All. 375=24 A. W. N. 48=1 A. L. J. 105. Mr. Justice Banerji came to a contrary conclusion in *Mithokuar v. Nekram*, S. A. 498 of 1906, decided on 2nd August, 1907.

<sup>11</sup> *Muh. Shabbir v. Zainulabdin*, 1929 A. I. R. All. 564=102 I. C. 184=8 L. R. Rev. 74=1927 R. C. 35=VIII U. D. (H. C.) 72=R. D. 581.

<sup>12</sup> *Maharaja of Benares v. Baleshwar Singh*, 1939 A. L. J. 120=1939 A. I. R. All. 210=1939 R. D. 101.

on the plea, however untenable, the appeal lies to the District Judge.<sup>1</sup> 40 All. 177 (cited in the last foot-note) was peculiar. In a civil suit the defendant pleaded that he was a tenant of the plaintiff and was directed under section 288 to establish his status. The plaintiff, evidently desiring to have the matter decided by a Civil Court either originally or in appeal, raised a futile plea that the Revenue Court had no jurisdiction. The effect of the plea, if given effect to, would have been to nullify the imperative provisions of section 288, and to enable the Revenue Court to reverse the order of the Civil Court. It could not therefore be given effect to and the observation at p. 178 that "it would be reducing matters to an absolute absurdity to hold that the defendants in a revenue suit could by formally raising an absolutely untenable plea of jurisdiction, take every case from the Revenue Court to the Civil Court" went beyond what the facts of the case demanded, and the head note is couched in too wide a language. In 15 A. L. J. 319, in a suit under section 95 of the Act of 1901, a plea as to jurisdiction was raised and decided. The Commissioner to whom an appeal was preferred from the decree returned it for presentation to the proper court. The District Judge being of opinion that no question of jurisdiction was really involved referred the matter to the High Court. He thought that the word "properly" should be read before "decided". The High Court negatived this. One of the judges was the same in the two cases. 40 All. 177 is not irreconcilable with 15 A. L. J. 319, but merely points out a case where section 265 (3) (b) will not apply. *Umrai Singh v. Ewaz Singh*,<sup>2</sup> follows 40 All. 177. There, a suit for ejectment was based on the allegation that one defendant (tenant) had illegally sublet to the other. The other pleaded that he was not a sublessee but a mortgagee from a date prior to 1902. Incidentally he also pleaded that the plaintiff was not entitled to eject him otherwise than by a suit before a competent Civil Court. This meant, of course, that if the defendant could establish the facts alleged by him, he, the plaintiff, could not get the relief claimed in a Revenue Court, and not that taking the facts alleged in the plaint to be correct, the Revenue Court had no jurisdiction; and this is what is meant by a plea of jurisdiction.<sup>3</sup> Hence an appeal from an Assistant Collector's decision lay to a Commissioner and not to a District Judge.<sup>4</sup>

<sup>1</sup> *Damodar Das v. Jhau Singh*, 15 A. L. J. 319=39 I. C. 87=3 Rev. and Cr. L. J. 137; *Gokaran Gupta v. Ganga Singh*, 42 All. 91=17 A. L. J. 107=52 I. C. 779 (A.)=6 R. and Cr. L. J. 1, 60=1 L. R. Rev. 29=1 U. P. L. R. 136; *Bay Nath Pathak v. Gaya Din*, 1934 A. L. J. 389=1934 A. I. R. All. 725=149 I. C. 820=3 A. W. R. 792=XV U. D. (H. C.) 125=15 L. R. Rev. 378=1934 A. L. R. 554=18 R. D. 302 *Contra Deo Narain Singh v. Sitala Baksh Singh*, 40 All. 177=16 A. L. J. 590=47 I. C. 891=4 Rev. and Cr. L. J. 156; *Abdul Hasan v. Shabir Hasan*, 9 L. R. Rev. 168=VIII U. D. 31=12 R. D. 250.

<sup>2</sup> 41 All. 270=16 A. L. J. 189.

<sup>3</sup> *Gokaran Singh v. Gunga Singh*, 42 All. 91; *Deo Narain Singh v. Har Shankar Prasad*, 7 L. R. Rev. 382=1926 R. C. 473=VII U. D. (H. C.) 229=10 R. D. 312.

<sup>4</sup> See also *Pohap Singh v. Mohan Singh*, 1922 A. I. R. All. 424=V U. D. (H. C.) 128=1922 R. C. 432=70 I. C. 578=7 R. D. 3.

*Gokaran Singh v. Ganga Singh*,<sup>1</sup> a three judge decision, is a later case. There, in a partition proceeding between *A* and *B*, *A* did not claim occupancy rights in respect of certain plots of land. Those plots were assigned to the lot of *B*. *A* took possession of those plots after the partition. *B* sued to eject him as a non-occupancy tenant. *A* pleaded that having regard to the allegations in the plaint, a Revenue Court had no jurisdiction. The Assistant Collector found *A* to be an occupancy tenant and held that he had jurisdiction. He dismissed the suit. An appeal to the District Judge was successful on the ground that *A* should have set up his occupancy rights in the partition proceedings and not having so done, he could not do so now. On an appeal to the High Court by *A*, he pleaded that no appeal lay to the District Judge. This was a strange position to take up considering that he himself had raised the plea of jurisdiction. All the cases mentioned above were reviewed. The decision turned upon the meaning of the expression "a plea of jurisdiction has been decided." It was held to mean a decision as to jurisdiction on the allegations in the plaint, *i. e.*, on a supposition that those allegations are true. And hence the appeal was held to have been properly entertained by the District Judge, whose decision on the merits was also affirmed.

In *Khub Singh v. Mohan Singh*,<sup>2</sup> a Bench ruled that if the trial court tries a plea of jurisdiction seriously and decides it, an appellate court cannot say that the plea was frivolous.

Where a defendant denies that he is a tenant of the plaintiff and objects that the plaint does not disclose whether the Court has jurisdiction a question of jurisdiction is not raised.<sup>3</sup>

Another ruling, of the Board of Revenue, is in *Roru v. Niadar Mal*,<sup>4</sup> where, in suit for ejectment the defendant pleaded that the subject of the suit was a grove and therefore he could not be ejected under the Tenancy Act. The first court framed an issue as to its jurisdiction. It was held that an appeal lay from the decree to the Commissioner, as no issue of jurisdiction was really involved and the decision on the issue did not mean a decision as to jurisdiction, but simply whether or not the land was groveland. So in *Abdul Husain v. Shabir Husain*,<sup>5</sup> but see *Badaman v. Baldeo Singh*.<sup>6</sup>

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<sup>1</sup> 42 All. 91=17 A. L. J. 1072=52 I. C. 779.

<sup>2</sup> 1294 A. I. R. All. 476=5 L. R. Rev. 183=VI U. D. (H. C.) 114=1924 R. C. 256=83 I. C. 251=10 Rev. and Cr. L. J. 253=9 R. D. 395.

<sup>3</sup> *Ratan Singh v. Pran Sukh*, 43 All. 368=19 A. L. J. 120=1921 A. I. R. All. 190=IV U. D. 707=7 Rev. and Cr. L. J. 82=2 U. P. L. R. (B. R.) 435=2 L. R. Rev. 6=6 R. D. 298.

<sup>4</sup> 6 Rev. and Cr. L. J. 263=2 U. P. L. R. (B. R.) 95=IV U. D. 155=60 I. C. 262=6 R. D. 255.

<sup>5</sup> 9 L. R. Rev. 190.

<sup>6</sup> 6 Rev. and Cr. L. J. 8.

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Where in a suit under section 183, the defence of some was that the real dispute was between them and the other defendants who should be made plaintiffs, a question of jurisdiction was held to arise.<sup>1</sup>

In a suit under section 180 the defendant pleaded that he was a landholder. The issue whether section 180 applies raises a question of jurisdiction.<sup>2</sup>

A question as to the applicability of the Act to a suit raises a question of jurisdiction.<sup>3</sup>

The question of jurisdiction should also be in issue in the appeal.

14. An appellate court cannot upset the decision of a trial court on a point not raised before it and of which there is no cogent evidence.<sup>4</sup>

In appeal a question of fact not raised in the first court should not be allowed to be raised for the first time.<sup>5</sup>

Where an Assistant Colloctor decreed enhancement of 25 per cent. and on the tenant's appeal (the landlord having submitted to the decree), the Commissioner remanded the case for a fresh trial, and as a result of such trial, the Assistant Collector enhanced the rent by 100 per cent. it was held that this was wrong. The landlord having submitted to the 25 per cent. enhancement, he can get no more.<sup>6</sup>

Suit wholly triable by Assistant Collector ; appeal partly triable by Commissioner and partly by District Judge ; appeal lies to the commissioner.<sup>7</sup>

15. *Res judicata*.—What is the effect of a Civil Judgment on an appeal under this section or section 266 ? Does it operate as *res judicata* ? There can be very little doubt about the matter when the case falls under section 286 ; but in cases outside that section the matter is not so clear. See the question discussed in note 8 to section 242 *ante*.

**266.** An appeal shall lie to the district judge from the  
Appeal from appellate appellate decree of a collector in any suit in  
decree of collector. which a question of jurisdiction has been  
decided and is in issue in appeal.

1. This reproduces section 243 [omitting clause (a)] of the Agra Act of 1926 which corresponded to section 180(2) of the Act of 1901, and corresponds to a part of section 119 of the Oudh Act.

2. In which a question of jurisdiction etc.—The meaning of this expression is the same as in section 265 (3). Orders which are not appealable under this section are final and cannot be challenged in the Commissioner's Court

3. It will be noticed that except in the case mentioned in this section appellate decrees of Collectors are not appealable.

<sup>1</sup> *Ram Das v. Gojudhar*, 6 L. R. Rev. 162=VI U. D. 483=1926 R. C. 135=7 R. D. 193.

<sup>2</sup> *Rajbali Singh v. Adya Prasad Singh*, 14 L. R. Rev. 350=XIV U. D. 447.

<sup>3</sup> *Budh Sen v. Digambar Singh*, XVI U. D. 607.

<sup>4</sup> *Harakh Chand v. Bhagirath*, 15 L. R. Rev. 21.

<sup>5</sup> *Durpat v. Sheo Narain*, 1938 A. L. J. 6=1938 R. D. 353.

<sup>6</sup> *Muneshar Singh v. Sri Ram Chandrajai*, 8 L. R. Rev. 313=1927 R. C. 376=VII U. D. 81=11 R. D. 643.

<sup>7</sup> *Muhammad Umar v. Nasira*, 1939 R. D. 463.

A second appeal to the District Judge is not confined to questions of law. It may be as to facts. He ought to try and determine the questions raised and should not dispose of the appeal summarily. Hence, if the first two Courts have given a concurrent finding of fact, he cannot dismiss the appeal merely by observing that fact. He should consider the evidence and decide on the merits.<sup>1</sup>

The question of jurisdiction may have been decided at any stage.<sup>2</sup> It is not necessary to enquire whether the plea is a frivolous one.<sup>3</sup>

**267.** An appeal shall lie to the Board from the appellate Appeal from appellate decree of a commissioner on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

1. This reproduces section 244 of the Agra Act of 1926 which corresponded to section 181 of the Act of 1901. It corresponds to section 116 (c) of the Oudh Act.

The limitation as to the Commissioner having reversed or modified the decree of the trial court contained in the Act of 1901, is removed.

This remains unaffected by any amendment introduced by the High Court to R. 1 of O. 42, C. P. C.

2. Item No. 12 of List II of the Second Schedule makes it compulsory to file a copy of the judgment of the trial court also.

There is no second appeal from orders which are not decrees.<sup>4</sup>

There is no third appeal to the Board.<sup>5</sup>

3. **Grounds specified in section 100, C. P. C.**—Section 100 (1) Specifies the grounds as follows :—

(a) the decision being contrary to law or to some usage having the force of law ;

(b) the decision having failed to determine some material issue of law or usage having the force of law ;

<sup>1</sup> *Hamid v. Bholanath*, 26 A. W. N 186. But see *Jagunnath Prasad v. Bachu*, 1924 A. 1. R. Oudh 349.

<sup>2</sup> *Kesho Das v. Murat*, 12 A. L. J 367=23 I. C. 230.

<sup>3</sup> *Baij Nath Pathak v. Gaya Din*, 1934 A. L. J 389=XV U. D. (H. C.) 125.

<sup>4</sup> *Maharaj Ram Bijai Prasad Singh v. Ram Bhanjan*, 1939 All. 766=1939 A. 1. R. All. 638=1939 A. L. J. 592 ; *Kishori v. Mukund Lal*, IV U. D 30=3 U. P. L. R. 69=1 L. R. Rev. 83=6 R. D. 105 ; section 272. But see *Binda v. Muhi. Mehdi Ali Khan*, V U. D. 67 ; *Tassaduk Husain v. Bakht Singh*, VI U. D. 114=5 L. R. Rev. Oudh 89=1923 R. C 609=8 R. D. 152 ; *Hari Narain v. Raj Bahadur Singh*, B. R. 3 of 1937=XVIII U. D. 339 (*quod hoc*) are no longer law

<sup>5</sup> *Hari Narayan v. Raj Bahadur Lal*, B. R. 3 of 1937=XVIII U. D. 339=1937 R. D. 55



- (a) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

So that a second appeal lies on a question of law or usage having the force of law or a substantial error or defect in procedure. It does not ordinarily lie on a question of fact.

The question of admission to a tenancy is a mixed question of law and fact, enough for a second appeal.<sup>1</sup>

The finding that the defendants had been admitted to the holding by zamindar can be set aside in second appeal if there is no evidence on the record to justify it.<sup>2</sup>

A finding of fact based on an assumption that settlement entries must be accepted as correct and cannot be disproved is not binding.<sup>3</sup>

A finding of fact on a judicial consideration of the evidence bars a second appeal, although the matter be doubtful on the record,<sup>4</sup> or the finding is not consistent with the pleading,<sup>5</sup> or the reasons given by lower courts are not very strong.<sup>6</sup>

A finding of fact can only be questioned if it is without any basis of evidence on the record.<sup>7</sup>

Interference with the finding of fact may be justified if there is practically no evidence to support it.<sup>8</sup>

A finding that a lease is not fraudulent is one of fact.<sup>9</sup>

So is a finding that there was no illegal subletting as the zamindars had consented to it.<sup>10</sup> That a person was not an occupancy but a lower class tenant is one of fact.<sup>11</sup> The finding that statutory rights had been established is a finding of fact and cannot be rejected.<sup>12</sup>

Whether a tenancy is permanent or precarious is a mixed question of law and fact.<sup>13</sup>

<sup>1</sup> *Nand Lal v. Wajid Ali*, XIX U. D. 241—1938 R. D. 672

<sup>2</sup> *Zahid Ali v. Ram Lagun*, 1941 R. D. 592.

<sup>3</sup> *Nanda v. Saghir Fatima*, XI U. D. 52—14 R. D. 242; *Sheo Shankar v. Bhola Singh*, 12 L. R. Rev. 94—8 O. W. N. 152—15 R. D. 112

<sup>4</sup> *Mukh Lal v. Sripal Nairain*, 6 L. R. Rev. 162—VI U. D. 437—1925 R. C. 309—8 R. D. 10. See also *Saikwa v. Ram Pal*, 1940 R. D. 246.

<sup>5</sup> *Ashgar Abbas v. Mohan*, 13 L. R. Rev. 5—XIII U. D. 38.

<sup>6</sup> *Durga Charan v. Jagai*, 1941 R. D. 586.

<sup>7</sup> *Sukhdeo v. Dhanni Singh*, 1941 R. D. 319.

<sup>8</sup> *Manodutta Dubey v. Ram Samujh*, 1941 R. D. 323.

<sup>9</sup> *Ram Nath v. Nehchal Singh*, XIV U. D. 329.

<sup>10</sup> *Pitam Singh v. Chandan Singh*, XV U. D. 51—18 R. D. 76.

<sup>11</sup> *Nand Ram Singh v. Harbans Lal*, XIV U. D. 337—14 L. R. Rev. 661.

<sup>12</sup> *Durga Charan v. Jagai*, 1941 R. D. 586.

<sup>13</sup> *Dhanna Mal v. Moti Sagar*, 1927 A. I. R. P. C. 102—8 Lah. 573—25 A. L. J. 959.

Whether a plot of land constitutes a grove is a question of mixed law and fact.<sup>1</sup>

Whether it was the intention of the family that the members of it, who took up their residences elsewhere, should sever all connection with their ancestral land, or that the member who remained a resident in the village should continue in charge of the land on behalf of the whole family is one of fact.<sup>2</sup>

Misinterpretation of a statement relied on as the basis of a decision raises a question of law.<sup>3</sup>

Absence of detailed reasons for differing from the trial court is not a sufficient ground for interfering,<sup>11</sup> nor the fact that reliance has been placed on documentary evidence to the exclusion of oral evidence.<sup>4</sup>

Where commissioner in appeal has been misled by a difference in the area of the plot in dispute due to mistake in measurement, his decision may be upset.<sup>5</sup>

Misplacing the burden of proof is a ground of second appeal.<sup>6</sup>

The discarding of fields in a certain village as unsuitable for exemplars in a suit for enhancement of rent is a finding of fact.<sup>7</sup>

Though the Board does not as a rule interfere with concurrent findings of the two courts below, it may when no real attempt was made to weigh the evidence or to analyse it regarding the proof of a particular fact, where there is no evidence worth the name to establish the fact, *e. g.*, of relinquishment for which exceptionally strong evidence would be required.<sup>8</sup>

The Board of Revenue has in some cases accepted second appeals from findings of fact for irregularity in procedure<sup>9</sup>; or when there is

<sup>1</sup> *Mubun-un-nissa v. Babu Lal*, 9 L R Rev. 250—IX U. D 69—12 R D. 508.

<sup>2</sup> *Sundra v. Bisheshar*, XIII U. D 68.

<sup>3</sup> *Gauri Shankar v. Umrao*, V U. D. 76—4 U. P. L R. (B R) 43—1922 R. C. 225—3 L. R. Rev. 222—7 R. D. 118.

<sup>4</sup> *Sheo Baksh Singh v. Mannu Singh*, V U D. 179—1922 R. C. 503—3 L. R. Rev. 454—6 R. D. 256.

<sup>5</sup> *Raja Rai v. Azhar Husain*, V U. D 281—1922 R. C 404—4 L. R Rev. 101—7 R. D. 473.

<sup>6</sup> *Madhai v. Tulsī*, XX U. D. 37—1938 R D. 735.

<sup>7</sup> *Natha v. Gopal*, 10 L. R. Rev. 302—XI U. D. 6—13 R. D. 862.

<sup>8</sup> *Sarfu Prasad Narain Singh v. Kehri Singh*, 1 L. R. Rev. 99—IV U. D. 135—6 R. D. 239.

<sup>9</sup> *Sukhpal Singh v. Shiva Singh*, XII U. D. 161—12 L R Rev. 3.

<sup>10</sup> As in *Guya Prasad v. Abbas Bandi*, A L J (1914) Sup. 21—B. R. 9 of 1914—1 O. L. J. 383—25 I. C 560—1 U. D 68; *Ram Subhag v. Kesho Prasad*, 29 I. C. 673—1 U. D. 202; *Tika v. Brij Bilas*, II U D. 355; *Raghu v. Pateshri*, II U. D. 456.

no evidence to support a finding of fact<sup>1</sup>; or where the decision was based on the appellant's demeanour and not on the evidence<sup>2</sup>; or the evidence was not discussed<sup>3</sup>; or all the evidence on the record has not been considered,<sup>4</sup> or no reasons are given for differing from the first Court<sup>5</sup>; or the finding is not warranted on any reasonable interpretation of the evidence,<sup>6</sup> or the finding is not based on a judicial consideration of the evidence,<sup>7</sup> or the evidence is disbelieved because it is oral,<sup>8</sup> or when the lower appellate court disbelieved a witness on a point on which he was not cross-examined and its findings were based on assumptions

<sup>1</sup> *Sarfuraz v. Babu Ram*, II U. D. 641 (but not where there is some evidence, however little); *Khayali Ram v. Narain Singh*, III U. D. 581=5 Rev. and Cr. L. J. 271; *Ram Dei v. Ram Sahai*, V U. D. 306=1922 R. C. 455=7 R. D. 520 (finding based on wrong premises and omission of admission of a party); *Parbhu Narain v. Pabbar*, 12 L. R. Rev. 414, XII U. D. 307=15 R. D. 738; *Ranadutta Dubey v. Ram Samugh*, 1941 R. D. 323.

<sup>2</sup> *Ram Dei v. Moti Bai*, III U. D. 358.

<sup>3</sup> *Jahangira v. Masitullah*, 1 L. R. Rev. 36=6 Rev. and Cr. L. J. 73=III U. D. 661=4 R. D. 437.

<sup>4</sup> *Kalawati v. Sita*, 9 Rev. and Cr. L. J. 208=1922 R. C. 135=V U. D. 441=4 L. R. Rev. 200=7 R. D. 238.

<sup>5</sup> *Shashik Muhammad v. Janki*, 56 I. C. 539=IV U. D. 65=2 U. P. L. R. 55=6 R. D. 176.

<sup>6</sup> *Parshotam Das v. Jan Muhammad*, 1 L. R. Rev. 127, IV U. D. 429=6 R. and Cr. L. J. 305=2 U. P. L. R. 107=5 R. D. 213.

<sup>7</sup> *Dattu Singh v. Ram Das*, 1 L. R. Rev. 148=IV U. D. 426=6 R. and Cr. L. J. 240=2 U. P. L. R. 97=60 I. C. 265=5 R. D. 211; *Raghunath v. Khuman*, 5 L. R. Rev. 150=VI U. D. 124=10 R. and Cr. L. J. 84=1924 R. C. 187=9 R. D. 521; *Bahori Lal v. Gokla*, V U. D. 246=1922 R. C. 472=3 L. R. Rev. 500=7 R. D. 539; *Radhey Ram v. Surajpal Singh*, V U. D. 580=4 L. R. Rev. 376=1923 R. C. 293=7 R. D. 370; *Narbadeswar v. Thakur*, 10 L. R. Rev. 130=X U. D. 93=13 R. D. 382.

<sup>8</sup> *Dulari v. Ram Rattan*, 2 L. R. Rev. 38=7 Rev. and Cr. L. J. 103=IV U. D. 529=5 R. D. 298; *Rambali v. Ram Rao Krishna*, 1923 R. C. 70=V U. D. 421=4 L. R. Rev. 178=7 R. D. 228, (finding on misconstruction of record); *Kattal v. Debi Sahai*, V U. D. 502, 599=4 L. R. Rev. 401=1923 R. C. 72=7 R. D. 299; *Nand Lal v. Shiam Sunder Lal*, 6 L. R. Rev. 69=VI U. D. 367=1924 R. C. 244=8 R. D. 273 (finding without judicial consideration of evidence on the record); *Kallu v. Sita Ram*, 6 L. R. Rev. 62=IV U. D. 382=1925 R. C. 57=8 R. D. 284 (incorrect deduction from facts), *Khatrani v. Parsotam*, 12 Rev. and Cr. L. J. 133=VII U. D. 85=7 L. R. Rev. 104=1926 R. C. 102=10 R. D. 441 (finding on mere assumption of facts or finding is against the evidence); *Purai v. Badri Prasad*, 1927 R. C. 372=8 L. R. Rev. 313=VIII U. D. 80=11 R. D. 494 (or court wrongly believed the statement of a witness); *Gurcharan v. Sitya Narayan*, 8 L. R. Rev. 82=VIII U. D. 82=1927 R. C. 370=11 R. D. 509.

without any foundation and of no value,<sup>1</sup> or (in third appeal) the finding is based mostly on presumption.<sup>2</sup>

A question of law raised but not considered may be taken up in second appeal.<sup>3</sup>

A second appeal lies from an *ex parte* decree.<sup>4</sup>

A person who did not join in an appeal to the Commissioner cannot appeal to the Board.<sup>5</sup>

A Court of second appeal may find a fact not found by the first Court or found without any evidence to support it, such finding being upheld by the Court of first appeal.<sup>6</sup> But a plea that the whole trial should be set aside and a new trial ordered because the trial court had not complied with O. 18, r. 8, C. P. C. cannot be taken for the first time in second appeal.

A document in existence from long before the suit, if not produced before the trial court, cannot be received by the Board in second appeal.<sup>7</sup>

**268.** The Board may either admit an appeal or may  
Powers of Board to summarily reject it.  
reject an appeal summarily.

This reproduces section 245 of the Act of 1926. Order 41, rule 11, Civil Procedure Code, ought to be applied. No. 13 of List II of the Second Schedule shows that the Board is not bound to hear a party before rejecting an appeal summarily. This does not mean that the Board should not hear a party. Unless a case is very clear on facts, an opportunity ought to be given to the appellant to substantiate his reasons for appealing.

**269.** An appeal shall lie to the High Court or the Chief Court,  
as the case may be, from the appellate decree  
Appeal from appellate  
decree of district judge. of a district judge on any of the grounds  
specified in section 100 of the Code of Civil  
Procedure, 1908.

1. This reproduces in effect section 246 of the Agra Act of 1926 which corresponded to section 182 of the Act of 1901 and to section 191 of the Rent Act of 1881 and corresponds to section 119 B of the Oudh Act.

2. As only decrees are open to second appeal and orders in execution fall under section 271 (2), *Ejaz Husain v. Shah Zaman Mirza*,<sup>8</sup> is no longer good law.

<sup>1</sup> *Dipti Singh v. Surendar Bahadur Singh*, 14 L. R. Rev. 301—XIV U. D. 133.

<sup>2</sup> *Dalip Singh v. Balwant Singh*, 1940 R. D. 231.

<sup>3</sup> *Gur Prasad v. Lajja Ram*, 9 L. R. Rev. 133—IX U. D. 50—12 R. D. 231.

<sup>4</sup> *Chaturbhuj v. Basdeo*, 29 I. C. 345—I U. D. 401—1 Rev. and Cr. L. J. 1.

<sup>5</sup> *Aisha v. Raghubir*, II U. D. 312.

<sup>6</sup> *Bechu Singh v. Beni Singh*, III U. D. 687—5 R. D. 413.

<sup>7</sup> *Sewa Ram v. Balu Prasad*, XIV U. D. 65.

<sup>8</sup> 16 O. C. 70.

In the Act of 1881 the words "special appeal" were used and it was decided that they comprised a third appeal from a decree passed by a Judge sitting as a Court of second appeal on an appellate decree of the Collector.<sup>1</sup> In the Act of 1901 the words "second appeal" were used and it was held that a second appeal mentioned in section 182 of that Act did not mean a third appeal. Hence a decision of District Judge under section 265 on a second appeal was not further appealable to the High Court.<sup>2</sup> The word "second" was omitted in the Act of 1926 (as also in the present Act) and a third appeal was held to lie from the appellate decree of the District Judge in a second appeal.<sup>3</sup> This was opposed to the Oudh view.<sup>4</sup>

A second appeal lies only from a decree. An order of remand under Order 41, r. 23, Civil Procedure Code, was not open to appeal but is so now, if passed by a Collector, *vide* section 271 (2), otherwise not.<sup>5</sup>

3. For the grounds specified in section 100, C. P. C. see note 3 to section 267 at page 319, *supra*.

An error of procedure within the meaning of section 100 (c) Civil Procedure Code must be found to have produced error in the decision of the case on the merits.<sup>6</sup>

**270.** Except as otherwise provided in this Act an appeal shall lie to the collector from every order, including an order rejecting an application for review, passed by an assistant collector of the second class.

Appeal to collector from order of assistant collector of the second class.

<sup>1</sup> *Juram v. Dulari*, 5 All. 306=3 A. W. N. 147.

<sup>2</sup> *Lachmi Narain v. Narotam*, 29 All. 12, 69=26 A. W. N. 251, 272; *Jadunandan v. Ramcharita*, 12 I. C. 139; *Chajmal v. Sirya*, 3 A. L. J. 625=26 A. W. N. 254 is bad law. Even a first appeal from order did not lie; *Gulzari Lal v. Latif Husain* 38 All. 181=14 A. L. J. 84=85 I. C. 27=2 R. and Cr. L. J. 28; *Hira Lal v. Maharaj Singh*, 35 I. C. 105 (A.)=2 R. and Cr. L. J. 225. See *Mantorna v. Banu*, 8 I. C. 529, for a case under the section.

<sup>3</sup> *Abdul Wahab Khan v. Ibrahim Khan*, 55 All. 356=1933 A. I. R. All. 260=1933 A. L. J. 121=XV U. D. (H. C.) 32=14 L. R. Rev. 128=17 R. D. 138=XIV U. D. (H. C.) 321.

<sup>4</sup> *Narain v. Baldeo Singh*, 1928 A. I. R. Oudh 214=4 O. W. N. 1258=X U. D. (H. C.) 16=9 L. R. Rev. 358=12 R. D. 109=107 I. C. 877; *Futeh Bahadur Khan v. Chhotey Khan*, IX U. D. (H. C.) 271=X U. D. (H. C.) 176=10 L. R. Rev. 207=5 O. L. J. 459=109 I. C. 794.

<sup>5</sup> *Gulzari Lal v. Latif Husain*, 38 All. 181; *Anandgir v. Srinivas*, 40 All. 652=16 A. L. J. 711=47 I. C. 1008=4 and Cr. L. J. 213; *Kehri Singh v. Thirpal*, 48 All. 104=1926 A. I. R. All. 113=23 A. L. J. 965=11 Rev. and Cr. L. J. 287=6 L. R. Rev. 213=1925 R. C. 433=VI U. D. (H. C.) 561=92 I. C. 282=9 R. D. 39 (even under section 10 of the Letters Patent).

<sup>6</sup> *Kundan Singh v. Bhunesh Singh*, 1937 A. L. J. 46=1937 A. I. R. All. 105=1936 R. D. 543.

1. This reproduces to some extent section 247 of the Act of 1926. The order must be of an Assistant Collector of the second class and must be a judicial order affecting the rights of parties, and includes an order rejecting an application for review. The words "except as otherwise provided in this Act" cover cases where the Act takes away the right of appeal, or empowers tribunals other than the Collector to entertain appeals.

2. Does this section allow an appeal from an order dismissing or allowing an objection or claim under Order 21, rule 58, C. P. C.? Under the Code of Civil Procedure, the proper remedy is a suit under Order 21 rule 63.

It has been held that an appeal lies.<sup>1</sup>

In *Bikram Singh v. Dip Singh*<sup>2</sup> property attached in execution of a rent decree was released by a second class Assistant Collector on objection under Order 21, rule 58. On appeal said to be under this section the Collector reversed that order. The right of the Collector to entertain the appeal does not appear to have been questioned. The objector then filed a civil suit under Order 21, rule 63 for a declaration that the property was not liable to attachment and sale. The decree-holder objected that no such suit lay as the order of the Collector was final. In the High Court it was assumed rather than decided that this section allowed an appeal to the Collector from the Assistant Collector's order. The civil suit was held to be maintainable as there was nothing inconsistent between Order 21, rule 63, Civil Procedure Code and this section.

An appeal lies from all orders of Assistant Collectors of the second class, whether or not appealable under the Code of Civil Procedure, or section 271 *e. g.*, from an order refusing an application for review,<sup>3</sup> as now expressly mentioned in this section.

271. (1) An appeal shall lie to the collector from the order of an assistant collector of the first class and to the commissioner from the original order of a collector, in any of the cases specified below, namely—

Appeal from order of assistant collector of the first class, and of collector, in certain cases.

(a) an order deciding a question regarding compensation for improvements under section 159; or determining

<sup>1</sup> *Hari Narain v. Raj Bahadur Lal*, B. R. 3 of 1937=XVIII U. D. 339=1937 R. D. 556.

<sup>2</sup> 54 All. 767.=1932 A. L. J. 514=13 L. R. Rev. 214=XIII U. D. (H. C.) 415.

<sup>3</sup> *Ramanuj Das v. Parmeshar Dayal*, B. R. 14 of 1932=14 L. R. Rev. 80=XIV U. D. (B. R.) 11, overruling *Hukum Singh v. Bhuri Singh*, B. R. 2 of 1929=X U. D. (B. R.) 46=10 L. R. Rev. 305; *Ram Ratan v. Duddh*, 14 L. R. Rev. 692=XIV U. D. 362. This also overrides *Abdul Aziz v. Jawahir Lal*, X U. D. 197=13 R. D. 69; *Bhagirath v. Anega*, XI U. D. 73=11 L. R. Rev. 96=14 R. D. 284; This was followed in *Algu v. Ghirau*, XVII U. D. 206=1936 R. D. 257.

the value of crops or trees or the amount of compensation under the provisions of section 160 ;

(b) an order under section 170, extending or refusing to extend the time for payment ;

(c) an order under section 15, section 16, section 18, sections 53 and 54, section 64, sections 72 to 75, section 77, sections 79 to 81, section 95, section 251, section 252 and section 294.

(2) An appeal shall lie from an order mentioned in section 47 or section 104 or section 144 or in Order XLIII, rule 1 of the Code of Civil Procedure, 1908, and made by an assistant collector of the first class or a collector.

Such appeal shall lie to the court, if any, having jurisdiction under section 265 of this Act to hear an appeal from the decree in the suit, or in the case of an application for execution, to the court having jurisdiction to hear an appeal from the decree which is being executed.

1. This reproduces to some extent section 248 of the Agra Act of 1926, and may be said to correspond slightly to a small part of section 119 of the Oudh Act. The appealable orders under sub-section (2) are those made by a Collector or an Assistant Collector of the first class

2. Right of appeal is governed by the date of the institution of the suit and not by the date of the filing of the appeal.<sup>1</sup>

3. Sub-section (2).—Rulings to the effect that no appeals lay from orders which were not decrees are no longer good law.<sup>2</sup>

No orders, which are not decrees, are appealable, unless they fall under ss. 47, 104, or 144 or under Order 43, Rule 1 Civil Procedure Code. An order setting aside a dismissal for default is not a decree, and is not one of the orders mentioned in those enactments, and hence is not appealable.<sup>3</sup>

Orders of remand, passed by Collectors, are now appealable,<sup>4</sup> and therefore must be challenged at once. They cannot be allowed in an appeal from the decree.<sup>5</sup> So are orders under section 47, and Order 21,

<sup>1</sup> *Kanak Singh v. Mahbub Ali Khan*, 1941 R. D. 81, (suit instituted under the old Act, appeal filed after the commencement of the new Act.)

<sup>2</sup> Such as *Bankey Lal v. Meghraj*, 19 A. L. J. 868=1921 A. I. R. All. 177=2 L. R. Rev. 182=8 R. and Cr. L. J. 1=63 I. C. 251 (order returning a memo of appeal for presentation to the proper court) ; *Dhani Ram v. Bhola Nath*, 27 All. 21 (order returning a plaint for presentation to the proper court) ; *Parmar v. Gannu*, 10 Rev. and Cr. L. J. 140=VI U. D. 61=5 L. R. Rev. 107=1927 R. C. 533=8 R. D. 135.

<sup>3</sup> *Kanauji Lal v. Chiraunji Lal*, 13 L. R. Rev. 244=XIII U. D. (H. C.) 107.

<sup>4</sup> *Shyam Baran v. Ram Ratan*, XIV U. D. 480

<sup>5</sup> This renders obsolete *Banwari Lal v. Chotey Lal*, III U. D. 421 ; *Jamna Prasad v. Jhamman*, 1 L. R. Rev. 70=5 R. and Cr. L. J. 58=4 R. D. 237.

rule 92. Only orders of Assistant Collectors of the first class and Collectors are made appealable; not orders of District Judges on appeal, *e. g.*, an order of remand passed by a District Judge is not appealable.<sup>1</sup>

An order of a District Judge refusing to restore a revenue appeal dismissed for default is not open to appeal.<sup>2</sup>

There is an appeal from an order filing an award made without the intervention of the court as it comes within section 104, C. P. C.<sup>3</sup>

There is no appeal from a finding.<sup>4</sup>

An order refusing restitution on reversal of a decree is under section 144, C. P. C. It was held not to be a decree<sup>5</sup> and consequently not appealable. It was certainly not an order under any of the enactments mentioned in section 248 of the Act of 1926, but is a decree as defined in section 2, C. P. C. and has been included in the present section among appealable orders.

Appeals against orders under the U. P. Tenancy Act are governed by section 271 (2) and not by the general provision contained in the Civil Procedure Code. Therefore no appeal lies against an order of remand passed by the lower appellate court.<sup>6</sup>

4. **Forum of appeal.**—An appeal from a Collector's order refusing to set aside a sale lies to the High Court and not to the Commissioner when the value exceeds Rs. 5,000.<sup>7</sup> In this case, the appeal was first presented to the Commissioner who on the respondent's objection that he had no jurisdiction, returned the memo. of appeal for presentation to the Civil Court. The District Judge on presentation of the appeal to him ruled that the value being above Rs. 5,000, the High Court was the proper forum of appeal. In the High Court an objection was taken that no appeal lay, as the case was governed by Act II of 1901 and not by the Act of 1926. The High Court held that as it was on the insistence

<sup>1</sup> *Dwarka Prasad v. Dariao Singh*, 1929 A. I. R. All. 560=1929 A. L. J. 863=11 L. R. Rev. 13=XI U. D. (H. C.) 56=115 I. C. 644=13 R. D. 562; *Sri Sheoji Maharaj v. Benimadho*, 55 All. 515=1931 A. I. R. All. 415=131 I. C. 133; *Pancham v. Rameshwar*, 1936 A. I. R. All. 376=1936 A. L. J. 690=XVII U. D. (H. C.) 88=1936 R. D. 144.

<sup>2</sup> *Satya Nidhan Banerji v. Muh. Hazabbur Ali Khan*, 53 All. 516=1931 A. L. J. 854=1931 A. I. R. All. 439=131 I. C. 871=15 R. D. 681.

<sup>3</sup> This overrides *Gobardhan Prasad v. Gur Prasad*, 8 A. L. J. 1090.

<sup>4</sup> *Lolla v. Baijnath Prasad*, II U. D. 499.

<sup>5</sup> *Kashi Prasad v. Balbhadar Singh*, 44 All. 283=20 A. L. J. 133=1922 A. I. R. All. 71=8 Rev. and Cr. L. J. 89=1922 R. C. 11=V U. D. (H. C.) 17=3 L. R. Rev. 97=65 I. C. 798=8 R. D. 538; *Shao Nandan Singh v. Suraj Prasad Singh*, 1938 A. L. J. 988=1939 A. I. R. All. 22=1938 R. D. 829.

<sup>6</sup> *Lochman v. Lochan*, 1941 R. D. 49.

<sup>7</sup> *Ram Khelawan v. Maharaja of Benares*, 1930 A. L. J. 224=1930 A. I. R. All. 15=120 I. C. 125=14 R. D. 67.



of the respondent that the Commissioner had returned the appeal it was not open to him to raise any question of jurisdiction and that as Act II of 1901 no longer prevailed a right of appeal existed.

Where by mistake *A's* objections to an execution sale in a suit valued at more than Rs. 5,000 being dismissed, he appeals to the District Judge and also to the High Court, and the District Judge dismisses his appeal and the High Court also dismissed *A's* first appeal to it, he can not file a second appeal from the decree of the District Judge with a request that the second appeal be treated as a first appeal.<sup>1</sup>

5. **Orders under section 104 C. P. C.**—Appeals lie to the courts competent under section 265 to hear appeals from decrees in the suit. An order of the Collector passed on appeal remanding a case is appealable to the District Judge.<sup>2</sup>

6. **Suits in Group A of the Fourth Schedule**—when tried by an Assistant Collector of the first class are appealable to the District Judge only when one of the conditions mentioned in clauses (a) to (d) of section 265 (1) exist. As regards clause (a) of that enactment, there is no appeal at all when the amount or value of the subject-matter does not exceed Rs. 50. Hence, an order which falls under section 104 (1), C. P. C., when made by an Assistant Collector of the first class in suits not above the value of Rs. 50, is not appealable at all. In suits mentioned in items 1 to 6 inclusive, of Group A, when tried by an Assistant Collector of the second class, an appeal from the decree lies to the Collector. Decrees of second class Assistant Collectors are not mentioned *eo nomine* in section 265. Hence appeals from orders made by such officers which fall under section 104 (1) appear to be unappealable.

Section 265 (3) says nothing about appeals to Revenue Courts. Hence, since appeals from such decrees lie to Collectors only in the first instance, orders under section 104 (1) when made by Assistant Collectors of the second class do not fall under section 271; but are appealable to the Collector under section 270.

An appeal against the order of a Collector confirming a sale carried out by a sale officer in execution of a decree for profits lies to the District Judge. The Rules in Chapter 40 of the Revenue Manual do not apply as sections 68—72 C. P. C. do not apply to the Act<sup>3</sup>

So also in respect of a decree for arrears of rent an appeal lies from the order of the collector to the District Judge.<sup>4</sup>

7. **Decrees in suits in Group A** are appealable to the Commissioner except as provided by section 202. Hence orders under section 104 (1) are appealable to the same officer.

<sup>1</sup> *Sri Narain Dubey v. Ram Narain Dubey*, 1934 A. L. J. 569—1934 A. I. R. All. 704—XV U. D. (II. C.) 54, 270—15 L. R. Rev. 268—16 L. R. Rev. 46.

<sup>2</sup> *Gambhir Singh v. Surendra Singh*, 52 All. 714—1930 A. L. J. 1065—1930 A. I. R. All. 455—XI U. D. (II. C.) 233—11 L. R. Rev. 179—14 R. D. 398.

<sup>3</sup> *Kalyan Singh v. Bhagwan Singh*, 1937 R. D. 37.

<sup>4</sup> *Asa Ram v. Parma*, 1938 R. D. 254.

The effect of section 202 is that appeals from Assistant Collectors of the first class should lie to Collectors. Hence in all suits under Chapter IX except under sections 198 and 199 the Collector's Court is the forum of appeal from orders under section 104 (1), C. P. C.

8. Sub-section (3) of section 270 provides for appeals to District Judges where questions of jurisdiction are raised. In all such cases, Civil Courts are the courts competent to hear appeals from orders falling under section 104 (1), irrespective of value.

9. Orders under section 47, C. P. C., passed by Assistant Collectors of the first class are appealable to the courts "having jurisdiction to hear an appeal from the decree which is being executed."

The remarks made above as to orders under section 104 (1), C. P. C., apply. One question that may arise is whether a certain application is an application in execution of a decree.

An appeal from an order on an application for execution of a decree for profits lies to the Civil Court.<sup>1</sup>

An order of stay in proceedings for execution of a decree for ejectment is an order under section 47, C. P. C. and appealable to the District Judge and not revisible by the Board under section 275.<sup>2</sup>

10. It was held in Oudh, that an order rejecting an application to set aside an order dismissing a previous application to revive a suit dismissed for default was appealable under section 135 read with section 116 of the Oudh Act, although it was not appealable under Order 43, rule 1, and that a second appeal to the Board lay from the Commissioner's order.<sup>3</sup> Both these positions are erroneous now.

**272.** No appeal shall lie from any order passed in appeal under the provisions of sub-section (7) of section 126, section 270 or section 271.

1. This reproduces to some extent section 249 of the Agra Act of 1926, and corresponds in some respects to section 120 of the Oudh Act, but confines the operation of the section to the three cases mentioned.

It is similar to section 104 (2), Code of Civil Procedure.

2. Section 126 (7) makes an order of an officer appointed under that section (to revise remissions of rent and revenue in emergencies) fixing, enhancing, abating or commuting rent appealable to the commissioner. The latter's order passed in appeal will not be further appealable to the Board. Section 270 makes an order mentioned therein appealable to the Collector. His order will not be further appealable. Section 271 makes certain orders appealable to revenue and civil courts. No further appeal will lie. This was the law laid down in section 249 of the Act of 1926.

The section refers to orders and not decrees passed on appeal from orders and not to orders passed on appeal from decrees. Hence, Collector's order of remand passed on appeal from a decree in a suit

<sup>1</sup> *Amir Hasan v. Badri Prasad*, XVIII U. D. 207—1937 R. D. 373.

<sup>2</sup> *Holdsworth v. Zamindar Chaudhri*, XX U. D. 87—1938 R. D. 801.

<sup>3</sup> *Tasduq Husain v. Bhagwan Baksh Singh*, VI U. D. 114—5 L. R. Rev. (O.) 89.

is appealable to the District Judge.<sup>1</sup> Any other interpretation would produce inconsistency between this section and section 271 (2), for O. 43, r. 1 C. P. C. mentioned therein refers to some appellate orders.

An order passed in appeal in connection with proceedings in execution of a decree for arrears of rent is not appealable further as it is not a decree but only an order<sup>2</sup> subject to section 272.

An order of remand passed by a District Judge on an appeal in a suit is not open to appeal.<sup>3</sup>

An order passed on appeal from an order granting an application for review in an ejectment suit is not open to further appeal to the High Court, for such an order is not a decree, nor can the High Court interfere in revision under section 276.<sup>4</sup>

*Order passed in appeal.*—Where an appeal is pending before a judge, any order passed with reference to the appeal is an order passed in appeal, *e. g.*, an order refusing to restore an appeal dismissed for default.<sup>5</sup>

**Revision.** See *Sital Din Dubey v. Sripal Singh*,<sup>6</sup> in which the High Court interfered in revision where a second appeal was barred under this section.

In *Badam Singh v. Kasturi*, cited in footnote 4 above the High Court held that no revision lay to it under section 276.

### Review.

**273.** The Board, on its own motion or on the application of a party to the case, may review and  
Review by Board. may rescind, alter or confirm any decree or order made by itself, or by a single member.

<sup>1</sup> *Gambhir Singh v. Surendra Singh*, 52 All. 714=1930 A. L. J. 1065=1930 A. I. R. All. 455=11 L. R. Rev. 179=XI U. D. (H. C.) 233=14 R. D. 298.

<sup>2</sup> *Raghupat v. Ram Sunder Prasad*, X U. D. 202=14 R. D. 44; *Brj Raj Saran v. Sis Ram*, 1930 A. I. R. All. 91=122 L. C. 415=14 U. D. 96; *Nani Kishore v. Makhan Lal*, 14 L. R. Rev. 759=XIV U. D. (H. C.) 115; *Sri Narain Dubey v. Ram Narain*, 15 L. R. Rev. 268=XV U. D. (H. C.) 54; *Mubarak Hasan v. Ishri Prasad*, 1936 A. L. J. 678=1936 R. D. 186; *Gulab Devi v. Abdul Ghafur Khan*, 1936 A. L. J. 1235=1936 A. I. R. All. 868=1936 R. D. 492=XVII U. D. (H. C.) 212.

<sup>3</sup> *Rameshwar Dayal v. Om Prakash*, 53 All. 698=1932 A. I. R. All. 140=1931 A. L. J. 599=12 L. R. Rev. 277=XII U. D. (H. C.) 119=133 L. C. 321=10 R. D. 543; *Baldeo Gir v. Beni Madho*, 1931 A. L. J. 901=1931 A. I. R. All. 415=15 R. D. 625.

<sup>4</sup> *Badam Singh v. Kasturi*, 1931 A. L. J. 595=1931 A. I. R. All. 605=12 L. R. Rev. 283=XII U. D. (H. C.) 170=133 L. C. 466=15 R. D. 547.

<sup>5</sup> *Satya Nidhan Banerji v. Muh. Hazabbar Ali Khan*, 1931 A. L. J. 964=1931 A. I. R. All. 553=133 L. C. 406=15 R. D. 651=XIV U. D. (H. C.) 21=15 L. R. Rev. 11.

<sup>6</sup> 1939 A. L. J. 932=1939 R. D. 564.

1. This reproduces section 250 of the Agra Act of 1926, which corresponded to section 183 of the Act of 1901, and corresponds to section 120-A of the Oudh Act.

2. On its own motion—This overrides *Ram Prasad v. Har Lal*.<sup>1</sup>

3. Power of review.

It will be noted that the Board is not bound by the rules as to reviews of section 114 and Order 47, rule 1 *et seq.* of the Civil Procedure Code.<sup>2</sup> The Board has unlimited power of review.<sup>3</sup> A party to a suit and appeal which has been decreed in terms of a compromise between the other parties, and whose interests are affected thereby may apply for review.<sup>4</sup> The Board may review on the ground that it has after the decision changed its view of the law while hearing another case.<sup>5</sup>

Compliance with O. XLVII C. P. C. is necessary for section 274 but has no bearing on section 273.<sup>6</sup>

Where a member of the Board made a note on an application for review containing allegations of discovery of new evidence that he would admit it on condition of certain enquiries being made and followed by a report, his successor in office may admit under Order 47, rule 2.<sup>7</sup> A member of the Board can admit an application for review of an order of his predecessor.<sup>8</sup>

**274.** Every other court shall be competent to review its judgment in accordance with the provisions of the Code of Civil Procedure, 1908, and the provisions of order XLVII of the said Code shall apply to any such review.

1. This reproduces section 251 of the Act of 1926, which corresponded to section 184 of the Act of 1901.

Courts other than the Board are bound by the provisions, of C. P. C. and a review admitted by them in contravention of those provisions is an act *ultra vires*. See under note 3 to last section.

2. **Limitation.**—The period of limitation for reviewing an order of ejectment runs from the date of delivery of possession.<sup>9</sup>

<sup>1</sup> V U. D. 14=3 L. R. Rev. 1.

<sup>2</sup> *Boldeo Singh v. Pahalwan Singh*, I U. D. 64.

<sup>3</sup> *Kamla Prasad v. Lal Bahadur*, XVI U. D. 160; *Azimulla v. Dharam Raj Sahu*, XIII U. D. 71; *Birwa Mahnon Estate v. Ram Prasad*, IV U. D. 184.

<sup>4</sup> *Chandan Lal v. Lachman Das*, 11 L. R. Rev. 40=XI U. D. 39=14 R. D. 117.

<sup>5</sup> *Sri Sita Ramji v. Sant Kumar*, XV U. D. 508=16 L. R. Rev. 85.

<sup>6</sup> *Chunni v. Jamna*, 1939 R. D. 663.

<sup>7</sup> *Azimullah v. Dharam Raj Sahu*, XIII U. D. 71.

<sup>8</sup> *Bindhya Chal v. Gharib*, 12 L. R. Rev. 63=15 R. D. 204, 215

<sup>9</sup> *Jamni Kuer v. Mathuri*=1939 A. L. J. (B. R.) 77=XX U. D. 243=1939 R. D. 275, relying on *Bitols v. Lala Din*, XVI U. D. 255=1935 R. D. 235; *Tota v. Asa Ram*, 1939 A. L. J. (B. R.) 80=193 R. D. 434=XX U. D. 369.

Application for review of an order of ejectment nine months after delivery of possession can not be allowed.<sup>1</sup>

But in *Shambhoo Nath v. Sher Singh*<sup>2</sup> it was held that the review application could be accepted if made with 90 days from the knowledge of ejectment though long after delivery of possession, where the holding was in possession of subtenants at the time of delivery.

3. Review can be had in the case of both decrees and orders.<sup>3</sup> Where an appeal has been filed, a review does not lie, and the fact that the appeal is withdrawn will not validate the review.<sup>4</sup>

When an appeal has also been filed, the court to which an application for review has been made has no jurisdiction to deal with it and any order passed by it is *ultra vires*.<sup>5</sup> It is sufficient compliance with Order 47, rule 2, if the application for review is presented to the Judge who delivered the judgment.<sup>6</sup> An application for review can not be made to the successor in office of a judge who decided the original case.<sup>7</sup>

If a tenant ejected was prevented by illness from paying the decreed arrears within the time allowed, that was sufficient cause for review.<sup>8</sup> If in a case of ejectment under section 80 of the Act of 1926 the tenant was not served with the notice under the section and had no notice of the proceedings until the actual ejectment, he could apply for review to the successor in office of the Assistant Collector who had ejected him as on discovery of new and important matter of evidence.<sup>9</sup> So if after the death of the original defendant in a rent suit, notice was issued to a wrong person as the legal representative of the deceased, and not to the right person and the latter was not served, a good case for review from the ejectment exists.<sup>10</sup> So where a suit was dismissed for default while the plaintiff had gone to look for his *Mukhtar*.<sup>11</sup>

A court ought to exercise its power of review in cases of *ex parte* orders for ejectment when the circumstances attending the service of the notice and the execution of the ejectments are suspicious.<sup>12</sup>

An order rescinding an order of ejectment whether the latter has been carried out or not, passed on review in the presence of and after hearing the other party, is legal.<sup>13</sup>

<sup>1</sup> *Butoli v. Lala Din*, XVI U. D. 245.

<sup>2</sup> 1939 R D 433—XX U. D. 368.

<sup>3</sup> *Ajudhia Singh v. Jagpati Kuar*, B. R. 2 of 1906.

<sup>4</sup> *Uttami v. Parshadi*, 11 L. R. Rev. 120—XI U. D. 83—14 R. D. 294.

<sup>5</sup> *Makranda Singh v. Ramdas Singh*, XI U. D. 174—13 R. D. 465.

<sup>6</sup> *Ajudhia Singh v. Jagpati*, B. R. 2 of 1903.

<sup>7</sup> *Tirbeni Prasad v. Jag Mohan*, XVII U. D. 168.

<sup>8</sup> *Tej Singh v. Chaitu*, B. R. 13 of 1910.

<sup>9</sup> *Tulsi Singh v. Rajman*, B. R. 3 of 1914.

<sup>10</sup> *Khuman Singh v. Raj Kumar Singh*, 9 L. R. Rev. 285—IX U. D. 97—12 R. D. 699.

<sup>11</sup> *Narain Das v. Murli*, 9 L. R. Rev. 299—IX U. D. 142—12 R. D. 695.

<sup>12</sup> *Ram Ratan v. Dudh Nath*, 14 L. R. R-v. 692—XIV U. D. 362.

<sup>13</sup> *Tika Singh v. Khushal Singh*, 4 Rev. and Cr. L. J. 27—III U. D. 77—5 R. D. 472.

Where the Collector did not dispose on the merits an appeal from an order of a second class Assistant Collector rejecting an application for review of an order of ejectment his decision was set aside in revision.<sup>1</sup>

The only mistake that can be rectified under Order 47, rule 2, is a clerical or arithmetical mistake apparent on the face of the decree.<sup>2</sup> One officer may review an order of another officer also on the ground of discovery of new evidence.<sup>3</sup> Only the judge who passed the decree can entertain an application for review.<sup>4</sup>

4. **New evidence**—An application for review for discovery of new evidence made to the Board should show by affidavit or otherwise that the date when the evidence came to the knowledge of the applicant was after the decision sought to be reviewed<sup>5</sup> and strict proof the allegation is necessary.<sup>6</sup> If the evidence was available long before, it will be no ground for review.<sup>7</sup> Where a case has been before the court for ten months and there have been several hearings, new evidence should not be admitted without satisfactory reasons.<sup>8</sup> Review cannot be allowed on the strength of a document already rejected at the trial and not made a ground of second appeal although such appeal was filed and decided.<sup>9</sup> If the allegation is that documents were made over to counsel who did not file them, the applicant must specify the documents, show their relevancy and prove the truth of his allegations.<sup>10</sup>

5. **Appeal: and the provisions of O. 47 etc.**—This makes the rules as to appeals in Order 47, rule 7, applicable.

An application for review cannot be allowed without notice to the opposite side as laid down in Order 47, rule 7 (2), and an order passed without such notice is illegal.<sup>11</sup>

The right of appeal is confined to the grounds mentioned in clauses (a) to (e) of that rule, in spite of the generality of Order 43, rule 1 (w).<sup>12</sup> No appeal lies from an order by an appellate Court reversing an order for grant of a review, on grounds which do not fall within rule 7,<sup>13</sup> *e. g.*,

<sup>1</sup> *Mukhia v. Jodha Singh*, II U D 268=3 Rev and Cr L J. 210=3 R D. 152.

<sup>2</sup> *Munni Lal v. Ghulam Ali*, 1923 R. C. 124=9 Rev and Cr. L J. 286=V U. D. 534=4 L. R. Rev. 272=7 R. D. 325.

<sup>3</sup> *Ib.*

<sup>4</sup> *Ram Baran v. Bhagwati*, 11 Rev. and Cr. L. J. 195.

<sup>5</sup> *Chhedi v. Tulsa*, XII U D. 267=1936 R D. 486.

<sup>6</sup> *Rajeshwar Devi v. Raghubar Dayal*, XV U. D. 137.

<sup>7</sup> *Bish Nath Rai v. Partab Narain Singh*, IV U. D. 253=1 L. R. Rev. 113, see *Mahipat v. Suraj Deo*, XVI U D. 56=1935 R D. 44. The Board, however, may review. *Ib.*

<sup>8</sup> *Mira Baksh Lal v. Sheo Dayal*, XIV U. D. 406=14 L. R. Rev. 800.

<sup>9</sup> *Ib.*

<sup>10</sup> *Kanhaya Lal v. Sumera*, XVI U. D. 560.

<sup>11</sup> *Narain v. Gunga*, X U. D. 185=13 R. D. 584.

<sup>12</sup> *Sunder v. Habib Chick*, 42 All 626; *Har Narain v. Umrai*, 10 A. L. J. 396; *Kashi Ram v. Atsukh*, X U. D. 181=13 R D 570; *Gopi Nath v. Batasi*, XIII U. D. 91=13 L. R. Rev. 231; *Fasahatullah Khan v. Moula Buz*, 1933 A. I. R All. 778=14 L. R. Rev. 731.

<sup>13</sup> *Khurshed Alam v. Rahmat Ulla*, 40 All. 68=4 R and Cr. L. J. 70; *Udai Singh v. Sri Thakur Radha Krishna*, XV U. D. 471=16 L. R. Rev. 9.

when a review is granted for "other sufficient cause."<sup>1</sup> Insufficiency of reasons for granting a review is not a ground for appeal.<sup>2</sup> Where an application for review is made to the judge who passed the decree sought to be reviewed, but granted by his successor in office on the ground that there was an error of the nature mentioned in Order 47, rule (1) (b), rule 2 of that order is not violated and no appeal lies against the order granting the review.<sup>3</sup> Where in granting a review, the Court does not find whether there was discovery of new evidence and whether it was of such an important nature that a review ought to be granted, it acts in contravention of Order 47, rule 4, and an appeal lies.<sup>4</sup> Insufficiency of the evidence legally given under Order 47, rule 7 (b), is no ground for objection.<sup>5</sup> When an order granting a review is attacked on the basis of clause (c), it is necessary to allege that the application for review was made after 90 days and that it was admitted without sufficient cause,<sup>6</sup> i. e., for the review and not for the admission of the application beyond limitation.<sup>7</sup>

An application for review, if admitted without a copy of the order to be reviewed, is not irregularly admitted and breach of Order 47, rule 3 is not one of the grounds on which an appeal is allowed under rule 7.

No review lies from an order dismissing a suit for default. If the dismissal was under Order 9, an application to restore under Order 9, rule 9 is the proper remedy; but, if under Order 17, rule 3, an appeal is the remedy.<sup>8</sup>

An order granting review made by an appellate Court is appealable, as Order 47, rule 7, is not controlled by section 104 (2), Code of Civil Procedure.<sup>9</sup> In spite of section 272 which corresponds to section 104 (2), this is true under this Act.

An objection as to the jurisdiction of the Judge granting review is also a ground of objection.<sup>10</sup>

An order granting a review may be a ground of appeal from a decree passed on the rehearing.<sup>11</sup>

<sup>1</sup> *Lakshman Das v. Mutsaddi Lal*, 15 A. L. J. 595.

<sup>2</sup> *Banarsi v. Altaf Husain*, 63 I. C. 171. (A); *Basanta Kumar v. Abhoy Shankar*, 37 C. L. J. 99=73 I. C. 306; *Contra*, 4 *Kotagiri v. Vellanki*, C. W. N. 725.

<sup>3</sup> *Fasahatullah Khan v. Maula Buz*, 1933 A. I. R. All. 778=14 L. R. Rev. 731.

<sup>4</sup> *Chiranjilal Ram Lal v. Tulsiram Jankidas*, 47 Cal. 568.

<sup>5</sup> *Abdul Khandkar v. Mohendra Lal*, 42 Cal. 830.

<sup>6</sup> *Khurshed Alam v. Rahmat Ullah*, 40 All. 68=4 R. and Cr. L. J. 70.

<sup>7</sup> *Udai Singh v. Sri Thakur Radha Krishna*, XV U. D. 471=16 L. R. Rev. 9.

<sup>8</sup> *Balwant v. Badal*, XIX U. D. 103=1938 R. D. 184.

<sup>9</sup> *Shamsher Ali v. Jagannath*, 17 C. W. N. 403=16 I. C. 203.

<sup>10</sup> *Ramanadham v. Narayanan*, 27 Mad. 602; *Ujagar v. Ram Sahai*, 14 O. C. 108=11 L. C. 345.

<sup>11</sup> *Bhyrubi Chunder v. Madhub Ram*, 20 W. R. 84, (F. B.); *Abdul Rahim v. Basha Rai*, 1 All. 363.

The three available grounds of appeal mentioned in Order 47, rule 7, are that the application was (a) in contravention of the provisions of rule 2, (b) in contravention of the provisions of rule 4, and (c) made after the expiration of the period of limitation prescribed therefor and without sufficient reason.

A question that crops up is whether the last 16 words of section 274 control or are controlled by section 270 i. e. whether an order granting a review made by a second class Assistant Collector is appealable although it is not open to any of the objections mentioned in clauses (a) to (c) of Order 47, rule 7.

Though the words of section 270 are quite general, an order granting a review is not within it, as it refers only to an order rejecting an application for review and the principle of *inclusio unius, exclusio alterius* will apply. But there is no reason why an appeal under Order 47, rule 7 will not lie under the last 16 words of section 274.

By virtue of section 271 (2), an appeal lies from an order granting a review<sup>1</sup> but not from one rejecting an application for review unless it was passed by a second class Assistant Collector, in which case section 270 makes it appealable.

6. **Revision.**—A revision lies when an application for review is rejected for a supposed deficiency in court-fees<sup>2</sup> or without hearing the applicant<sup>3</sup>; or without enquiry<sup>4</sup> or from an order granting a review on pleas other than those mentioned in clauses (a) to (c) of rule 7, if section 275 applies,<sup>5</sup> e.g., a review, granted during the pendency of an appeal filed after the application for review,<sup>6</sup> or without the Court coming to any conclusion as to any of the causes mentioned in rule 1 of Order 47,<sup>7</sup> or from an order rejecting a review from an order of ejectment for arrears on the first day of hearing, without giving the defendant a short time for payment<sup>8</sup>; or from an order which is not appealable under Order 47, rule 7.<sup>9</sup>

Entertaining an appeal on grounds other than those mentioned in Order 47, rule 7, is open to revision.<sup>10</sup> An order dismissing an appeal from an order granting a review is not open to revision.<sup>11</sup>

<sup>1</sup> This overrides *Budhu Mal v. Murlidhar*, 7 L. R. Rev. 154—1926 B. C. 198—VII U. D. 123—12 R. and Cr. L. J. 161—10 R. D. 477.

<sup>2</sup> *Willis v. Jawad*, 26 All. 468; *Kandhaiya Lal v. Surajpal*, 7 L. R. Rev. 14—VII U. D. 30—1925 R. C. 558—10 R. D. 119.

<sup>3</sup> *Jaidhari v. Rasik Lal*, 24 I. C. 694 (C.).

<sup>4</sup> *Moti v. Mahdub Ali*, VI U. D. 330—6 L. R. Rev. 14—9 R. D. 206—11 Rev. and Cr. L. J. 54—1925 R. C. 9.

<sup>5</sup> *Atra v. Chajju*, 49 P. W. R. of 1911—12 I. C. 246.

<sup>6</sup> *Ramanadhan v. Narayanan*, 27 Mad. 602.

<sup>7</sup> P. L. R. 380 of 1914.

<sup>8</sup> *Munshi v. Kashi Ram*, X U. D. 97—10 L. R. Rev. 112—13 R. D. 338.

<sup>9</sup> *Bhupa v. Satish Chander*, 12 L. R. Rev. 196—15 R. D. 528.

<sup>10</sup> *Abdul Sadiq v. Abdul Aziz*, 21 All. 152.

<sup>11</sup> *Gopal Das v. Altaf Khan*, 11 All. 383.



7. **High Court.**—The power of High Court in rent cases is not affected by the Act.<sup>1</sup>

### *Revision.*

**275.** The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the district judge or to the Board, and if such subordinate court appears—

Power of Board to call for cases.

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the Board may pass such order in the case as it thinks fit.

1. This reproduces section 252 of the Act of 1926 which reproduced section 185 of the Act of 1901.

It should be noticed that the expression used in section 275 is "any case" and not "any suit or application" used in section 276. The former is wider in aspect than the latter.

2. **Any case.**—The expression *case* includes suit<sup>2</sup> as well as other proceedings.

This section does not apply to suits under the Land Revenue Act.<sup>3</sup>

**Case decided.**—No revision lies unless a case has been decided. If the case has been remanded with a direction to dispose of it afresh, the rights of the parties have not been decided in any way and no revision lies.<sup>4</sup> So where a case has been merely stayed<sup>5</sup>

No revision lies against an order setting aside an *ex parte* decree as there is, no case decided within the meaning of section 275.<sup>6</sup>

An order of remand directing trial on merits again where the trial court had already given definite findings on issues remitted in remand was held not justified and was set aside in revision.<sup>7</sup>

The Board may revise an interlocutory order,<sup>8</sup> if it cuts at the very root of the question between the parties.<sup>9</sup>

<sup>1</sup> *Partab Bahadur Singh v. Badlu*, 21 O. C 254=48 I. C 276=5 R. and Cr. L. J. 74.

<sup>2</sup> II U. D. 90, *Thakur Dayal v. Maharaja of Dumraon*, B. R. 6 of 1886.

<sup>3</sup> *Sarkar Dulaiya v. Kallu*, 9 L. R. Rev. 2=IX U. D. 3=1927 R. C. 434=12 R. D. 32

<sup>4</sup> *Rikhai v. Jamuna*, 1941 R. D. 253.

<sup>5</sup> *Navin Chandra v. Riddhey Shyam*, 1941 R. D. 340.

<sup>6</sup> *Jai Shanker v. Raghuraj Singh*, 1941 R. D. 593.

<sup>7</sup> *Tulsi Ram v. Dhupan Rai*, 1941 R. D. 315

<sup>8</sup> *Balmakund v. Behari*, IV U. D. 599=7 R. and Cr. L. J. 188=2 L. R. Rev. 92=5 R. D. 365, (under the Act of 1901 which did not have the word "decided").

<sup>9</sup> *Jokhan Lal v. Jwala Prasad*, XIV U. D. 432=14 L. R. Rev. 188.

3. **In which no appeal lies**—The power of revision extends to all suits and proceedings in which no appeal lies. As to appeals from decrees and orders see sections 264-271.<sup>1</sup>

Where an appeal from a case lies to the District Judge the Board cannot revise,<sup>2</sup> though the High Court may, under section 276. For instance, in a profits suit falling under section 265, subsection (1) an appeal would lie to the District Judge and hence the Board cannot revise the Assistant Collector's decree. Where there are connected cases of different valuations and the value of some of them makes these appealable to the District Judge, all the cases would be governed by the procedure proper to the high valuation cases, and no revision lies to the Board.<sup>3</sup> An application for review of the Assistant Collector's judgment and decree if granted could be appealable to the District Judge under section 271 read with Order 43, rule 1 (w), and Order 47, rule 7. But an order rejecting such application is not open to appeal either to the Civil or to the Revenue Court, except to the Collector when passed by an Assistant Collector of the second class, and, hence, *prima facie*, cannot be revised by the High Court under section 276. The Board has, however, ruled otherwise.<sup>4</sup> In any case the Board may refuse to interfere.<sup>5</sup>

It has been held that an order rejecting an application for review may be revised by the Board, as no appeal therefrom lies to the District Judge.<sup>6</sup>

The Board cannot entertain a revision against an order for ejecting in execution of a decree for arrears of rent amounting to more than Rs. 200 as the order is appealable to the District Judge. But it can entertain a revision against an order rejecting an application for review as that order is not appealable at all.<sup>7</sup>

The High Court has ruled that the Board has the power to revise<sup>8</sup> an order of Assistant Collector rejecting an appeal for review.

The Board may revise an order refusing to set aside an order of dismissal for default in a suit from a decree in which an appeal would lie.<sup>9</sup>

<sup>1</sup> See *Holdswoth v. Zamindar Chaudhri*, XX U. D. 87=1938 R. D. 801 cited in note 9 to section 271 at p. 829 *ante*

<sup>2</sup> *Sri Prasad v. Gaura*, XIII U. D. 165

<sup>3</sup> *Baru Lal v. Kamta Prasad*, XVI U. D. 391

<sup>4</sup> *Ram Jiawon v. Ram Adhin*, B. R. 1 of 1928=9 L. R. Rev. 158=IX U. D. 50=12 R. D. 217.

<sup>5</sup> *Mumtaz Ali v. Amir Ali*, XV U. D. 215=15 L. R. Rev. 295.

<sup>6</sup> *Har Gyan v. Lakhmi Chand*, B. R. 8 of 1932=XIII U. D. (B. R.) 89=13 L. R. Rev. 411; *Mumtaz Ali v. Amir Ali* XV U. D. 215=15 L. R. Rev. 295; *Dhian Singh v. Una Dutt*, XV U. D. 276=115 L. R. Rev. 438

<sup>7</sup> *Kishore Singh v. Ganga Bishun*, 1941 R. D. 419

<sup>8</sup> *Fagira v. Parduman*, 53 All. 715=1932 A. I. R. All. 92=1931 A. L. J. 529=12 L. R. Rev. 243=XII U. D. (H. C.) 98=135 I. C. 547=15 R. D. 498; so the Board in *Sri Prasad v. Gaura*, XIII U. D. 165=13 L. R. Rev. 357

<sup>9</sup> *Saghar-un-nissa v. Subhanullah*, 2 L. R. Rev. 22=IV U. D. 284=7 Rev. and Cr. L. J. 128=6 R. D. 485; *Abdul Ghani v. Hizar*, B. R. 17 of 1925=6 L. R. Rev. 210=11 Rev. and Cr. L. J. 9=VI U. D. v=1925 R. C. 527; *Zorawar Singh v. Sahab Singh*, 12 Rev. and Cr. L. J. 149=1926 R. C. 161=VII U. D. 111=7 L. R. Rev. 136=10 R. D. 466.

Board may revise where an appeal lies neither to the District Judge nor to the High Court from the decision,<sup>1</sup> *e. g.* in a suit under section 231<sup>2</sup> or in a suit under section 227,<sup>3</sup> of a value less than Rs. 200.

If an appeal lies no revision is open,<sup>4</sup> and the Board may reject an application for revision simply on the ground that the applicant could have appealed but did not avail himself of the right,<sup>5</sup> or may treat a revision application as a memorandum of appeal.<sup>6</sup>

Where a Court which had enhanced rent by more than 25 per cent. did not consider whether the enhancement ought to be progressive, it was held to have failed to exercise jurisdiction.<sup>7</sup>

Where the Court of appeal bases its findings on evidence which is not on the record and fails to appreciate what constitutes a separate property in which the lambardar has no share, and other circumstances exist, the Board may interfere in revision.<sup>8</sup>

Where on an application for recovery of arrears of rent from a *thekadar* the collector passes an order that the rents are recoverable as arrears of revenue, the order is open to revision.<sup>9</sup>

Where in spite of stay orders issued by the Board under the Stay Proceedings Act, 1937, the lower court does not stay execution proceedings the neglect is more than a material irregularity. The execution was a wrong done which could not be put right in revision, as section 275 does not apply to such a case.<sup>10</sup>

That the evidence on the record does not justify a finding on an issue of fact is no ground for revision.<sup>11</sup>

**Grounds of interference.**—The grounds on which the Board may move or be moved are the same as in the Civil Procedure Code, and must be confined to the meaning attached by the Privy Council in 11 Cal. 6.<sup>12</sup> (*Amir Hasan v. Sheo Baksh Singh*).

The Board in spite of B. R. 1 of 1904, has taken a very lenient view, and shown its readiness to interfere in any case in which it considers

<sup>1</sup> *Kanauj Lal v. Chiranj Lal*, XV U. D. 178—15 L. R. Rev. 254.

<sup>2</sup> *Bhoop Ram v. Kedar Singh*, XVII U. D. 23—1936 R. D. 49.

<sup>3</sup> *Imam Baksh v. Laiq-un-nissa*, XVII U. D. 27—1936 R. D. 45.

<sup>4</sup> *Nabi Baksh v. Muhammad Yar Khan*, B. R. 6 of 1899.

<sup>5</sup> *Zalim Singh v. Ganga Charan*, 14 L. R. Rev. 848—XV U. D. 60.

<sup>6</sup> As in *Sunder Singh v. Sital Prasad*, IV U. D. 203—29 I. C. 678.

<sup>7</sup> *Kallan v. Dildar*, B. R. 4 of 1907.

<sup>8</sup> *Sahdeo v. Ram Saran*, XX U. D. 40—1938 R. D. 742.

<sup>9</sup> *Ram Nath Singh v. Secy. of State*, XX U. D. 80—1938 R. D. 796 ; *Secy. of State v. Ram Nath Singh*, XX U. D. 82—1938 R. D. 798.

<sup>10</sup> *Ram Narain v. Behari Lal*, 1939 A. L. J. (B. R.) 42—1939 R. D. 37.

<sup>11</sup> *Chandra Kali v. Bhairon Singh*, 1941 R. D. 327.

<sup>12</sup> *Debi Prasad v. Mahendra Singh*, B. R. 1 of 1904.

that injustice has been done,<sup>1</sup> or in cases of gross and palpable error of law involving substantial injustice and not for mere error of law,<sup>2</sup> e.g., for ignoring a remand finding and placing the burden of proof wrongly,<sup>3</sup> for ignoring a judgment which would operate as *res judicata*,<sup>4</sup> for a wrong decision as to *res judicata*,<sup>5</sup> for ignoring an express provision of law,<sup>6</sup> for not giving benefit of the Assistance of Tenants Act, 1932, and not giving sufficient amount of grace, when ejecting a tenant in execution of a decree for arrears,<sup>7</sup> for not itself deciding a question of representation to a deceased party,<sup>8</sup> for dismissing an application for restoration without examination,<sup>9</sup> or where a decree for ejectment was given to co-sharers not entitled to collect rent, there being a lambardar,<sup>10</sup> where the suit was allowed to be withdrawn with permission to bring a fresh case because an unnecessary party was not impleaded in a suit for arrears of rent, as any fresh suit would have been time-barred,<sup>11</sup> or where such withdrawal was allowed without sufficient reason,<sup>12</sup> or where a suit was allowed to be withdrawn with liberty to bring a fresh suit without considering the terms as to payment of costs on which the permission should have been granted,<sup>13</sup> or where a Court, while examining a *patwari*, did not compare his map with the map produced from the record room,<sup>14</sup> or where a suit was dismissed

<sup>1</sup> *Baldeo Singh v. Pahalwan Singh*, I U D 64 ; *Dhandu v. Hans Raj*, X U. D. 10 =10 L. R. Rev. 1=13 R. D. 146 ; *Jamuna Prasad v. Hakim Singh*, 15 L. R. Rev. 586=XV U. D. 358.

<sup>2</sup> *Janki Prasad v. Lila*, 1 U. P. L. R. (B. R.) 5=III U. D. 55 ; *Kedar Nath v. Chanderpal Singh*, III U. D. 60=5 R. D. 544 ; *Jodha Singh v. Atma Ram*, III U. D. 184=4 R. D. 24 ; *Sheo Nandan v. Lachman*, III U. D. 579=5 Rev. and Cr. L. J. 235=4 R. D. 360 ; *Shyam Lal Das v. Bishun Mohan Sahai*, XIV U. D. 199=14 L. R. Rev. 428

<sup>3</sup> *Chakrapan v. Nathua*, 2 U P L R. (B. R.) 152=III U. D. 576=5 R. and Cr. L. J. 221=4 R. D. 379.

<sup>4</sup> *Deo Narain v. Bidapat*, IV U. D. 251=6 R. D. 459.

<sup>5</sup> *Rupa v. Sheo Prasad Singh*, IV U. D. 282=6 R. D. 481 ; *Ilahi Khan v. Rajab Ali*, 32 I. C. 851=II U. D. 36=2 R. and Cr. L. J. 94=4 R. D. 505.

<sup>6</sup> *Sahdeo Prasad v. Ram Sahai*, V U. D. 93=1922 R. C. 190=6 L. R. Rev. 257=7 R. D. 153 ; *Zasrab v. Changu*, I U. D. 157.

<sup>7</sup> *Narain Singh v. Ram Chand*, XV U. D. 412=16 L. R. Rev. 15.

<sup>8</sup> *Khyali Ram v. Jasram*, IV U. D. 885=5 R. D. 136.

<sup>9</sup> *Ram Sarup v. Jumna*, B. R. 2 of 1921=3 L. R. Rev. 236=7 R. and Cr. L. J. 254 ; *Sampat Singh v. Bir Bahadur*, 8 Cr. L. J. 70, 78=3 L. R. Rev. 38=IV U. D. 638.

<sup>10</sup> *Sobharam v. Banwari Lal*, III U. D. 101=5 R. D. 509.

<sup>11</sup> *Balwant Singh v. Faizullah*, 31 I. C. 456=I U. D. 292.

<sup>12</sup> *Jagat Narain v. Jai Narain*, 4 L. R. Rev. 210=1923 R. C. 80=V U. D. 540=7 R. D. 815.

<sup>13</sup> *Hari v. Sri Thakurji Maharaj*, B. R. 1 of 1916=13 A. L. J. (B. R.) 10=51 I. C. 617=I U. D. 49=31 I. C. 139.

<sup>14</sup> *Ganga v. Dip Narain Singh*, 33 I. C. 414=I U. D. 119.

for default although the defendant had admitted a part of the claim,<sup>1</sup> or where the burden of proof was wrongly laid and a finding was arrived at without any evidence,<sup>2</sup> or where the onus of proof was wrongly laid or an enquiry was held as to payment under decree not certified under O. 21, r. 2, C. P. C.,<sup>3</sup> or where an order directed the ejectment of the mortgagee of a fixed-rate holding without redemption,<sup>4</sup> or where a decree directed the ejectment of the mortgagee of a groveholder who had died heirless,<sup>5</sup> or where a Kayastha got the name of his natural son entered as an occupancy tenant although he continued in possession with his legitimate sons, and the courts below decided that his occupancy rights had terminated,<sup>6</sup> or where land which the Board held not to have lost its character as *sir* on account of a transfer was held to have lost its character and its holder was treated as an occupancy tenant,<sup>7</sup> or for grave irregularities,<sup>8</sup> disregard of the provisions of section 26 of the Act in fixing the rent of an expropriatory tenant under section 87, L. R. Act,<sup>9</sup> or where the Commissioner applied the provision of section 22 of the Act of 1901 in a case in which the widow who had succeeded while Act XII of 1881 was in force died after the close of 1901,<sup>10</sup> or where a finding is not based on any evidence,<sup>11</sup> or where restoration of a suit was refused without considering an important piece of evidence,<sup>12</sup> or where an order of ejectment was made under section 80 of the Act of 1926 in spite of insufficient service of notice,<sup>13</sup> or for finding for resumability without evidence,<sup>14</sup> or where an unregistered but compulsorily registerable lease was admitted in evidence,<sup>15</sup> or for mistake as to limitation,<sup>16</sup> or for not considering

<sup>1</sup> *Rosfullah v. Ahmad Saleh*, 29 I C 33—I U. D. 143.

<sup>2</sup> *Nurain Das v. Mir Khan*, 29 I. C. 61; *Dat Prasad v. Charan Singh*, 3 Rev. and Cr. L. J. 1—I U. D. 203, 696—3 R. D. 103—277; *Janki Prasad v. Chundi Lal*, III U. D. 156—II U. D. 164—3 R. D. 57

<sup>3</sup> *Bhagwan Das v. Gulab Singh*, XV U. D. 27—14 L. R. Rev. 859.

<sup>4</sup> *Nandan Kishore v. Muhammad Husain*, 29 I C 555

<sup>5</sup> *Payag v. Bijanand*, 29 I. C. 560.

<sup>6</sup> *Kalka Prasad v. Baij Nath Prasad*, 29 I. C. 67—I U. D. 397—1 Rev. and Cr. L. J. 30.

<sup>7</sup> *Kamuluddin v. Ramzan Ali*, 29 I. C. 64.

<sup>8</sup> *Bhai Singh v. Abdul Jalil Khan*, 8 Rev. and Cr. L. J. 80—V U. D. 1—3 L. R. Rev. 49—8 R. D. 493; *Banwari Lal v. Madan Gopal*, XVIII U. D. 253—1937 R. D. 384.

<sup>9</sup> *Hira Singh v. Jodha Singh*, 32 I. C. 1001—I U. D. 243.

<sup>10</sup> *Babu Ram v. Tujammul Husain*, I U. D. 67.

<sup>11</sup> *Kesho Prasad Singh v. Suba Khan*, I U. D. 193.

<sup>12</sup> *Sukha v. Nawab Singh*, IX U. D. 152—9 L. R. Rev. 325—12 R. D. 787.

<sup>13</sup> *Kanhai v. Durga Prasad*, I U. D. 309—1 R. and Cr. L. J. 15.

<sup>14</sup> *Norain v. Mir Khan*, I U. D. 321.

<sup>15</sup> *Dhangu v. Nazir Ahmad*, II U. D. 67—4 R. D. 536.

<sup>16</sup> *Sharfuddin v. Baldeo Prasad*, II U. D. 570.

the finding on remand<sup>1</sup> or for fastening occupancy rights on *sir* land<sup>2</sup> or dismissing a suit for non-joinder,<sup>3</sup> or deciding a case without notifying change of date, court and place,<sup>4</sup> or ignoring a ruling of the Board,<sup>5</sup> or Commissioner dismissing an appeal without discussing appellant's pleas and giving reasons for his decision,<sup>6</sup> or trial court dismissing suit for profits merely on patwari's statement of accounts and without enquiring into the collections or examining the defendant on oath,<sup>7</sup> or decision without judicially considering the evidence on the record<sup>8</sup> or omission to consider a question definitely raised<sup>9</sup>; or decision based on misconstruction of document<sup>10</sup>; or refusing to restore a case without considering an important piece of evidence,<sup>11</sup> or when taken out of turn and dismissed for default when litigant went to call his vakil, and application to restore made promptly,<sup>12</sup> or where the court failed to award costs not trifling in amount.<sup>13</sup>

Where court admitted an application under section 151, C. P. C. for correction of an alleged mistake in an order passed four years before, where no such mistake existed, the order was revised.<sup>14</sup>

The Board interfered in *Rup Narain v. Bhup Singh*,<sup>15</sup> though the court below had given logical effect to one of its earlier rulings where occupancy rights were denied because the court committed an error in taking a one year's lease to be a written lease,<sup>16</sup> so where resumption of a service tenure was ordered on a notice which did not mention the specific service no

<sup>1</sup> *Chakarpan v. Nuthua*, 2 U. P. L. R. (B. R.) 22—III U. D. 576—5 Rev. and Cr. L. J. 221.

<sup>2</sup> *Ram Sarup v. Zalim Singh*, 1 U. P. L. R. (B. R.) 17—III U. D. 243—5 R. and Cr. L. J. 96—52 I. C. 456—4 R. D. 99.

<sup>3</sup> *Chhedi v. Anantoo*, III U. D. 342—4 R. D. 151.

<sup>4</sup> *Sukhmani Singh v. Lantoo*, 8 Rev. and Cr. L. J. 55—IV U. D. 531—2 L. R. Rev. 225—5 R. D. 300.

<sup>5</sup> *Amir Husain v. Allahadia*, 6 Rev. and Cr. L. J. 108—2 U. P. L. R. 93—60 I. C. 258.

<sup>6</sup> *Lodhi v. Gulsher*, V U. D. 288—1922 R. C. 374—7 R. D. 465.

<sup>7</sup> *Sunder Lal v. Sri Narain*, V U. D. 521—VI U. D. 325—6 L. R. Rev. 16—1923 R. C. 151—8 R. D. 453.

<sup>8</sup> *Ram Charan v. Kuli*, V U. D. 435—4 L. R. Rev. 193.

<sup>9</sup> *Sohan v. Ahmad Ali*, V U. D. 438—4 L. R. Rev. 197—1923 R. C. 130—7 R. D. 239.

<sup>10</sup> *Gaya Prasad v. Ram Lal*, 9 Rev. and Cr. L. J. 255—4 L. R. Rev. 246—1923 R. C. 150—V U. D. 475—7 R. D. 250.

<sup>11</sup> *Sukha v. Nawab Singh*, 9 L. R. Rev. 325—IX U. D. 152.

<sup>12</sup> *Raghu Nandan Rai v. Sarup Koeri*, 9 L. R. Rev. 328—IX U. D. 158—12 R. D. 801.

<sup>13</sup> *Mahboob-ullah v. Rahmat-ullah*, XVIII U. D. 217.

<sup>14</sup> *Wahidunnissa v. Amir Hasan*, 14 L. R. Rev. 693—XIV U. D. 363.

<sup>15</sup> II U. D. 293—3 R. and Cr. L. J. 967—8 U. D. 213.

<sup>16</sup> *Mariam v. Commissioner of Rohilkhand*, II U. D. 374—III U. D. 55—2 R. and Cr. L. J. 222—3 R. D. 297—5 R. D. 434.

longer required,<sup>1</sup> so where in a suit for arrears of rent, the amount of the recorded rent being disputed, the court did not come to a definite finding as to the correct annual rent and contended itself with remarking that the zamindar should apply for correction of papers,<sup>2</sup> so where the court made a mistake of law which in the opinion of the Board caused substantial injustice,<sup>3</sup> so where the court disposed of a suit without framing the issues raised and without considering or alluding to the evidence led as to them.<sup>4</sup>

5. The Board refused to interfere in *Jang Bahadur v. Muhammad Yahia*,<sup>5</sup> although according to its view the lower courts were wrong, so in *Amar Nath v. Mata Saran*,<sup>6</sup> so in *Abdul Haq v. Gayadin*,<sup>7</sup> where there was a conflict of authorities, and in *Ajodhya Prasad v. Harbans*<sup>8</sup>; *Muh. Nazir Khan v. Abdul Subhan*<sup>9</sup>; *Janki Prasad v. Prag Narain*<sup>10</sup>; *Salamat-ulla v. Makhan Lal*,<sup>11</sup> (order restoring a suit dismissed for default); *Raghu Raj Singh v. Gurdhan*,<sup>12</sup> (order under Order 13, Rule 2, refusing to admit document produced at a later stage); *Chandi Dutt v. Jadubans*,<sup>13</sup> (ejectment under s. 81 (5) of the Act of 1926, under the rule then prevailing which rule was subsequently declared to be wrong and the tenant did not show why he did not pay the small amount of arrears); *Gutam Singh v. Sher Singh*,<sup>14</sup> (court not taking notice of a matter of fact never laid before it).

6. The Board added a necessary party in revision.<sup>15</sup>

Cross-objections can not perhaps be filed.<sup>16</sup>

The Board under its wide power of revision can take cognizance of all proceedings coming to its notice in any manner whatever.<sup>17</sup>

Where an appeal does not lie, it can be converted into revision<sup>18</sup>

<sup>1</sup> *Bhajju v. Gopal Singh*, I U. D. 368—33 I. C. 773—1 Rev. and Cr. L. J. 92.

<sup>2</sup> *Kartik Prasad v. Jitan*, II U. D. 559.

<sup>3</sup> *Jwala Dial v. Ram Chandar*, II U. D. 433.

<sup>4</sup> *Mauji Ram v. Dulare Lal*, VI U. D. 129—5 L. R. Rev. 153—1924 R. C. 182—9 R. D. 525.

<sup>5</sup> 29 I. C. 649.

<sup>6</sup> III U. D. 64—5 R. and Cr. L. J. 105—5 R. D. 461.

<sup>7</sup> 2 Rev. and Cr. L. J. 243—II U. D. 94—3 R. D. 6.

<sup>8</sup> II U. D. 194—3 R. and Cr. L. J. 33—3 R. D. 96.

<sup>9</sup> II U. D. 213.

<sup>10</sup> 5 Rev. and Cr. L. J. 43—III U. D. 248—4 R. D. 60.

<sup>11</sup> 1 U. P. L. R. (B. R.) 29—53 I. C. 70—III U. D. 674—4 R. D. 424.

<sup>12</sup> X U. D. 224—13 R. D. 826.

<sup>13</sup> XI U. D. 146—14 R. D. 496.

<sup>14</sup> 13 L. R. Rev. 297—XIII U. D. 113.

<sup>15</sup> *Jagpat Giv v. Jawahar*, XV U. D. 478.

<sup>16</sup> *Bhopal v. Mansa Puri*, XVI U. D. 167.

<sup>17</sup> *Sarkar Dulaya v. Kallu*, 9 L. R. Rev. 2—1927 R. C. 434—IX U. D. 3.

<sup>18</sup> *Lachman v. Lochan*, 1941 R. D. 49.

When once application for revision has been accepted the procedure for appeals should be followed and the decision should not be modified without notice to the other side.<sup>1</sup>

When an application is made to a court subordinate to the Board for referring the case under this section and it is not appealable to that court, it cannot remand the case for further enquiries to decide whether it should be submitted for revision. All it can do is to report it as it stands.<sup>2</sup> It is not necessary for such court to summon the parties and hear them before reporting.<sup>3</sup> It cannot itself revise the order but may submit the case to the Board.<sup>4</sup>

Usually, revisions should be filed within 4 months,<sup>5</sup> i. e., complete with all the necessary papers.<sup>6</sup>

Where a Lower Court's action amounted to depriving a party of his right of appeal, the Board heard the revision as a second appeal.<sup>7</sup>

The fact that a copy of the formal order has not been presented is not a bar to call for the record.<sup>8</sup>

**276.** The High Court or the Chief Court, as the case may be, may call for the record of any suit or application which has been decided by any subordinate revenue court, and in which an appeal lies to the district judge and in which no appeal lies to the High Court or to the Chief Court as the case may be; and if the district judge or such subordinate court appears—

Power of High Court or Chief Court to call for cases.

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the court may pass such order in the case as it thinks fit.

1. This reproduces section 253 of the Act of 1926, adding the words "the District Judge or," with the result that orders of District Judges are made open to revision if they satisfy the conditions of the section. This will override the decision to the contrary such as *Satya Nidhan*

<sup>1</sup> *Rannu Rai v. Hasan Khan*, B. R. 11 of 1884.

<sup>2</sup> *Sukhrum v. Himayat*, II U. D. 158—2 L. R. Rev. 16—3 R. D. 58.

<sup>3</sup> *Pahlad v. Baldeo*, 2 L. R. Rev. 17—II U. D. 159—3 R. D. 45.

<sup>4</sup> *Ashfaq v. Kallan*. 2 Leg. Rem. 22.

<sup>5</sup> *Bashir Khan v. Zuib-un-nissa*, 10 Rev. and Cr. L. J. 23—4 L. R. Rev. 393—V U. D. 595—1923 R. C. 282—7 R. D. 383.

<sup>6</sup> *Chamaru Rai v. Sheo Raj*, XV U. D. 162—15 L. R. Rev. 232.

<sup>7</sup> *Ram Prasad v. Har Lal*, 3 L. R. Rev. 1—V U. D. 14—8 R. D. 498.

<sup>8</sup> *Sri Prasad v. Goura*, XIII U. D. 166—13 L. B. Rev. 397.



*Banerji v. Muh. Hazabbar Ali Khan*<sup>1</sup>; *Bachu Lal v. Dharam Deo Lal*<sup>2</sup>; *Jagdeo Singh v. Kesho Prasad Singh*<sup>3</sup>; *Badam Singh v. Kasturi*<sup>4</sup>; *Ramji Mal v. Devi Prasad*<sup>5</sup>; *Gobardhan Das v. Dau Dayal*<sup>6</sup> (*quod hoc*).

In Oudh there was no section expressly empowering revision, and rulings for or against the powers of revision will be no good law.<sup>7</sup>

2. The section applies only to suits instituted and initially tried by a Revenue Court; and not a suit rightly or wrongly brought in a Civil Court and tried by it.

Where a District Judge on appeal returned a plaint in a revenue suit filed in a Civil Court, for presentation to the proper Court, the High Court, on revision, held that this involved a question of jurisdiction or whether the court acted illegally.<sup>8</sup> This does not affect section 276, as the suit having been filed in a Civil Court, revision, if any, lay under section 115, C. P. C., and not under this section.

The High Court can revise only the order of a subordinate Revenue Court and of a District Judge on appeal from such an order.

In revision the High Court will cast its eye not merely on one part of the proceedings, but the whole of them. What come under the review of the High Court are the proceedings as a whole from start to finish. It can revise the judgment of the District Judge as well as of the Assistant Collector if it finds that injustice has been done.<sup>9</sup>

In a suit under section 217 for possession by a *thekadar* if a question of jurisdiction is raised as required by section 265 (3) and

<sup>1</sup> 1932 A. L. J. 1123=XIV U. D. (H. C.) 21.

<sup>2</sup> 1930 A. I. R. All. 656=1930 A. L. J. 1055=XI U. D. (H. C.) 269.

<sup>3</sup> 51 All. 1020=1930 A. L. J. 467=13 R. D. 728.

<sup>4</sup> 1931 A. I. R. All. 605=1931 A. L. J. 595=XII U. D. (H. C.) 170.

<sup>5</sup> 1933 A. L. J. 10=XIV U. D. (H. C.) 22.

<sup>6</sup> 54 All. 573 (F. B.)=1932 A. I. R. All. 273=16 R. D. 293

<sup>7</sup> Here are a few of them :—*Fateh Bahadur Khan v. Chhotey Khan*, X U. D. (H. C.) 176=10 L. R. Rev. 207=IX U. D. (H. C.) 271=5 O. W. N. 457=109 I. C. 794; *Ghani Ahmad v. Nannhu*, 1937 A. I. R. Oudh 143=XVII U. D. (H. C.) 198=1936 R. D. 387; *Chauharja Baksh Singh v. Kalka*, 96 A. L. J. 543=72 I. C. 394=5 R. D. 193=1922 R. C. 612; *Jagan Nath Prasad v. Bechu*, 10 O. L. J. 77=1924 A. I. R. Oudh 249=27 O. C. 89=80 I. C. 327=5 L. R. Rev. (O.) 78=1923 R. C. 517=8 R. D. 469; *Kali Baksh Singh v. Bhagwan Das*, 1924 A. I. R. Oudh 16=10 O. L. J. 191=72 I. C. 1023=VI U. D. (H. C.) 132=5 L. R. Rev. (O.) 17=10 R. and Cr. L. J. 102; *Narayan v. Baldeo Singh*, 4 O. W. N. 1258=X U. D. (H. C.) 16; *Gaya Prasad v. Kalap Nath*, 1929 A. I. R. Oudh 389=6 O. W. N. 661=119 I. C. 337=13 R. D. 595.

<sup>8</sup> *Khelari v. Har Prasad*, 1930 A. L. J. 1015=1931 A. I. R. All. 434=XI U. D. (H. C.) 248=11 L. R. Rev. 202=14 R. D. 381; *Deoki Nandan v. Ram Chandra*, 1937 A. L. J. 905=1937 A. I. R. All. 177=1938 R. D. 551=XVIII U. D. (H. C.) 225.

<sup>9</sup> *Rati Ram v. Niadar Mal*, 1941 R. D. 462.

the appeal to the District Judge is dismissed a revision lies to the High Court.<sup>1</sup>

Where a Revenue Court acting under section 286 frames an issue as to proprietary title and submits it to the Civil Court for determination, the Civil Court in dealing with the issue is not a Subordinate Revenue Court.<sup>2</sup>

3. Section 115, C. P. C. does not apply, and the High Court's power of revision is confined to the four corners of section 276, and even section 224 Government of India Act does not apply.<sup>3</sup> The expression *in which an appeal lies to the District Judge* means an appeal from the particular order, and not one in a suit in which, if a decree were passed ultimately, and in which the order was passed, an appeal would lie to the District Judge. An order setting aside the dismissal for default of a revenue suit is not an order in which an appeal lies to the District Judge, although the decree in the suit, if passed, would be appealable to him. Hence, the High Court cannot revise that order.<sup>4</sup>

When no appeal lies to the District Judge from an order, the High Court cannot revise.<sup>5</sup>

The word order does not occur in the opening part of the section. The words "in which an appeal lies...High Court" refer to "suit or application" and not to any order passed in it.

The jurisdiction under the section can be invoked only after the termination of the proceedings in the suit or those based on an application made in the suit or otherwise, provided in either case an appeal lies to the District Judge, but not to the High Court, from the decree passed in the suit, or from the final order passed in the proceeding started on an application, as the case may be.<sup>6</sup> In this case, while a suit for profits was pending, an application for stay of proceedings pending the decision of a Civil Court appeal *inter partes* and dealing with the question of the parties' rights, was dismissed by the Assistant Collector. This might be taken to mark the termination of a proceeding started by the application, but as no appeal lay to the District Judge from such an order section 276 was held inapplicable. An order setting aside an award and proceeding with the suit is not revisable.<sup>7</sup>

<sup>1</sup> *Ramji Mal Lal v. Devi Prasad* 55 All 128=1933 A. I. R. All 42=17 R. D 95=XIV U D (H. C.) 22.

<sup>2</sup> *Satya Nidhan Banerji v. Muk. Hazabbar Ali Khan*, 1933 A. I. R. All. 93=1932 A. L. J. 1123=14 L. R. Rev 18=17 R. D 93=XIV U D (H. C.) 21

<sup>3</sup> *Jhakeri v. Ram Nuresh Sahu*, 1935 A. L. J. 357=1935 R. D 131=XVI U. D. 196.

<sup>4</sup> *Kanauji Lal v. Chiranjit Lal*, 1932 A. I. R. All. 589=1932 A. L. J. 863=13 L. R. Rev 244=16 R. D. 481

<sup>5</sup> *Ram Narain Sahu v. Makhna*, 54 All. 404=1933 A. I. R. All. 14=17 R. D. 1177 (order staying a pending suit) ; *Panna Lal v. Basdeo*, 1933 A. I. R. All. 118=XV U D. (H. C.) 29 ; *Sardar Singh v. Chhotey Lal*, 1940 A. L. J. 41=1940 R. D. 32 ; *Jugannath Singh v. Sita Ram*, 1941 R. D 488

<sup>6</sup> *Ram Narain Sahu v. Makhna*, 54 All. 404=1933 A. I. R. All. 14=15 L. R. Rev. 26=17 R. D. 1177.

<sup>7</sup> *Wasir Singh v. Nagar*, 1934 A. I. R. All. 265=XV U. D. (H. C.) 74=15 L. R. Rev. 407.

In *Gobardhan Das v. Dau Dayal*,<sup>1</sup> a Bench of three Judges have reaffirmed the High Court view that no revision under section 115, C. P. C. lies from any order of a District Judge deciding a revenue appeal under the Tenancy Act.

No revision lies to the High Court unless an appeal lies to the District Judge and no appeal lies to the High Court. In suits in Group A of the Fourth Schedule, no appeal lies to the District Judge where the value of the subject-matter of the suit does not exceed Rs. 50. Hence section 276 does not apply to such cases and revision, if any, lies to the Board of Revenue, only when an appeal might have been actually filed.<sup>2</sup>

An order dismissing a suit for want of prosecution under Order 9, rule 8, C. P. C. can be set aside under Order 9, rule 9 or section 151, and if the suit is restored, there is no appeal from the order of restoration to the District Judge. Hence the High Court is powerless to entertain a revision from the order.<sup>3</sup>

The main contention in the case was that the order for dismissal was under Order 17, rule 3 as there had been several adjournments to enable the plaintiff to produce his evidence and the order of restoration was under Order 47, rule 4, in which case an appeal would lie to the District Judge the suit being of a value exceeding Rs. 200. But the Assistant Collector did not decide the case on the merits or refer to the evidence already produced in the case. Therefore the order of restoration was taken to be under Order 9, rule 9.

Where no appeal lay to the District Judge, *e g*, in a suit for profits valued at less than Rs. 50 no second appeal or revision lies to the High Court from an order of remand made by him without jurisdiction in entertaining the appeal.<sup>4</sup>

So where a plaint in a suit for declaration of tenancy rights or for possession is rejected by an Assistant Collector of the First Class, an appeal, if any, does not lie to the District Judge, but to the Commissioner. Hence the High Court cannot interfere in revision.<sup>5</sup>

4. And in which no appeal lies to the High Court.—is difficult to interpret. The word *or* for *and* would have eased the situation. Section 265 shows that decrees of Assistant Collectors of the first class in cases falling under sub-section (1) and sub-section (4) of that section are appealable not to the District Judge but to the High Court where the amount or value of the subject-matter of the suit exceeds Rs 5,000. Taken literally section 276 would prohibit a revision to the High Court

<sup>1</sup> 54 All. 573=1932 A. L. J. 365=1932 A. I. R. All. 273=13 L. R. Rev. 199=XIII U. D. (H. C.) 74.

<sup>2</sup> *Gobardhan Das v. Dau Dayal*, 1932 A. L. J. 365=XIII U. D. (H. C.) 74.

<sup>3</sup> *Bohra Panna Lal v. Basdeo*, 1933 A. I. R. All. 118=1933 A. L. J. 1100=14 L. R. Rev. 31=XIV U. D. (H. C.) 29=17 R. D. 127

<sup>4</sup> *Gurwar Singh v. Shah Ram Chunder*, 1929 A. L. J. 885=1929 A. I. R. All. 586=117 I. C. 110=XI U. D. (H. C.) 51=11 L. R. Rev. 2=13 R. D. 662.

<sup>5</sup> *Ram Jatan v. Bishu Nath*, 1931 A. I. R. All. 582=13 L. R. Rev. 207=XII U. D. (H. C.) 159=134 I. C. 252=15 R. D. 535.

in such cases from any orders passed in a suit or application in such cases by an Assistant Collector of the first class.

Do the words "no appeal lies to the High Court" apply to cases in which no second appeal lies to the High Court? They do.<sup>1</sup>

Suppose a District Judge entertains an appeal which does not lie to him, *e. g.*, in any suit in Group A of a value not exceeding Rs. 200 and reverses the decision of the Assistant Collector of the first class who tried it. Can the High Court interfere with the decision of the District Judge? It certainly cannot under section 276.<sup>2</sup> Section 269 provides the only remedy allowed by the Act, *i. e.*, second appeal. The Allahabad High Court in *Jwala Prasad v. Salik Ram*,<sup>3</sup> adopted this view. There, under the Rent Act of 1881, no appeal lay to the District Judge in an arrears of rent suit of a value not exceeding Rs. 100, decided by an Assistant Collector of the first class, and the District Judge did entertain an appeal in the case. It was held that in second appeal the High Court could reverse the decision.

The true rule seems to be that a second appeal lies when the trial court's decision is final and unappealable and the lower appellate court entertains an appeal;<sup>4</sup> but if the appellate court on appeal wrongly entertained itself passes a decree which is unappealable, no further appeal lies but it may be revised.<sup>5</sup>

### *Transfer of cases*

**277.** The Board may, on sufficient cause being shown, transfer any suit, application or appeal, or  
 Transfer of cases by Board. class of suits, applications or appeals from any revenue court to any other revenue court competent to deal therewith.

This reproduces section 255 of the Act of 1926, which reproduced section 187 of the Act of 1901.

**278.** A commissioner may exercise within the limits of his division the same powers as the Board  
 Transfer of cases by commissioner. under the last preceding section.

This reproduces section 256 of the Act of 1926, which reproduced section 188 of the Act of 1901.

Sections 277 and 278 correspond to section 123 of the Oudh Act.

<sup>1</sup> *Gobardhan Das v. Dau Dayal*, 1932 A. L. J. 365=XIII U. D. (II C.) 74.

<sup>2</sup> *Gobardhan Das v. Dau Dayal*, 1932 A. L. J. 365=XIII U. D. (II C.) 74.

<sup>3</sup> 13 All. 575.

<sup>4</sup> See *Bindeshwari Prasad Singh v. Lakshpat Nath Singh*, 15 C. W. N. 725=8 I. C. 26; *Abdul Husain v. Kasi*, 27 Cal 362; *Walayat Husain v. Ram Lal*, 12 A. L. J. 1113.

<sup>5</sup> *Amirta Lal v. Ram Chandra*, 29 Cal. 60; *Zahur Ahmad v. Taslim-un-nissa*, 89 I. C. 404(A).

**279.** (1) A commissioner may, with the previous sanction of the Board, transfer any appeal or class of appeals, pending before himself, to any collector within his division.

Transfer of appeals by commissioner to collector.

(2) The order passed by a collector on an appeal transferred to him by a commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the commissioner.

(3) The commissioner may by order recall to his own court any appeal or class of appeals transferred to a collector under sub-section (1).

1. This reproduces section 257 of the Act of 1926, which reproduced section 189 of the Act of 1901.

2. Transfer of an appeal not authorised by the Board notification is illegal<sup>1</sup> Under sub-section (1) a general sanction by the Board justifies the commissioner to transfer appeals to collectors.<sup>2</sup>

**280.** A collector with the previous sanction of the commissioner, or an assistant collector in charge of a subdivision with the previous sanction of the collector, may transfer any case or class of cases pending before himself, to any subordinate court competent to deal therewith.

Transfer of cases by collector or assistant collector.

1. This corresponds to section 258 of the Act of 1926, which with section 259 reproduced section 190 of the Act of 1901. The condition as to the previous sanction of the commissioner or the Collector is new. It corresponds a little to section 121 of the Oudh Act.

2. The transfer must be to a court competent to deal with the case.<sup>3</sup>

**281.** A collector or an assistant collector in charge of a sub-division may withdraw any case or class of cases from any court subordinate to him, and may try such case or class of cases himself, or transfer such case or class of cases to any other subordinate court competent to deal therewith.

Withdrawal of cases by collector or assistant collector.

This reproduces section 259 of the Act of 1926 which corresponded to section 190 of the Act of 1901, and corresponds to section 122 of the Oudh Act.

It modifies section 24 of the Code of Civil Procedure.

<sup>1</sup> *Bhan Kishore Singh v. Rahman*, III U. D. 526=4 R. D. 335.

<sup>2</sup> *Prag Narain v. Kanchan Singh*, VI U. D. 100=5 L. R. Rev. 126=1924 R. C. 90=9 R. C. 514.

<sup>3</sup> *Muqaddam Ali v. Makeruddhuj*, 1936 R. D. 197.

**282.** For the purposes of sections 280 and 281 the courts of all assistant collectors shall be deemed to be subordinate to the collector and the courts of all assistant collectors of the second class to be subordinate to the assistant collector in charge of the sub-division within which they exercise jurisdiction.

This corresponds to section 261 of the Agra Act of 1926. *Cf.* section 124 of the Oudh Act.

It enunciates a rule of subordination of Assistant Collectors of the first and second classes.

**283.** A settlement officer may transfer any case or class of cases pending before him to any assistant settlement officer, and may withdraw any case or class of cases from an assistant settlement officer and may try such case or class of cases himself, or transfer the same to any other assistant settlement officer.

This reproduces section 260 of the Act of 1926.

**284.** A district judge may, with the previous sanction of the High Court or of the Chief Court, as the case may be, transfer any appeal or class of appeals, from the decree or order of a revenue court pending before himself, to a civil judge subordinate to him and such civil judge shall dispose of such appeal or class of appeals as if he were a district judge.

**285.** A district judge may withdraw from a civil judge any appeal or class of appeals from a decree or order of a revenue court and try such appeal or class of appeals himself or transfer such appeals or class of appeals to any other civil judge competent to deal therewith.

1. Sections 284 and 285 are new and are based on section 24 of the Code of Civil Procedure as applied to appeals. Section 284 as shown in note 12 to section 265 at p. 815 recognises the previous law, and overrides *Kashi v. Asharfi Singh*,<sup>1</sup> in which it was observed that under section 242 of the Act of 1926 (now section 265) only the district judge could hear an appeal.

2. A transfer under section 284 can be made only with the previous sanction of the High Court or the Chief Court as the case may be. Without that sanction the court to which the transfer is made will have no jurisdiction. Compare section 279 in which the previous sanction of the Board is necessary for a transfer made by commissioner and section 283 in which such sanction of the commissioner or the collector is necessary for a transfer by the collector or the assistant collector in charge of a sub-division respectively.

<sup>1</sup> 1938 All. 754—1938 A. L. J. 720—1938 A. I. R. All. 511—1938 R. D. 714.

*Questions of proprietary right in revenue courts.*

**286.** (1) If in any suit or proceeding in a revenue court a question of proprietary right in respect of the land which forms the subject-matter of the suit or proceeding is raised, and such question has not previously been determined by a court of competent jurisdiction, the revenue court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only.

*Explanation I*—A plea of proprietary right which is clearly untenable and intended solely to oust the jurisdiction of the revenue courts shall not be deemed to raise a question of proprietary right within the meaning of this section.

*Explanation II*—A question of proprietary right does not include the question whether land is *sir* or *khulkaush*.

(2) The civil court, after re-framing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit, accepting the finding of the civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court passed in a suit in which an issue involving a question of proprietary right has been decided by a civil court under sub-section (2) shall lie to the civil court which having regard to the valuation of the suit, has jurisdiction to hear appeals from the court to which the issue of proprietary title has been referred.

1. This reproduces in effect section 271 of the Act of 1926 which corresponded to sections 199 of the Act of 1901 and to section 208 of the Rent Acts.

“Proprietary right” according to section 241 includes the right of an under-proprietor, but not of a lessee, even though a permanent one.<sup>1</sup>

2. To bring in this section (a) a question of proprietary right (b) in respect of the land, the subject-matter of the suit or proceeding, must be raised and (c) such question should not have been previously determined by a competent court, such court may be civil or revenue provided it had jurisdiction to decide the question. Schedule IV and s. 242 show the suits and proceedings within the exclusive competence of revenue courts. A decision as to any of the matters comprised therein by a civil court except by way of appeal or revision where one is allowed, will not be that of a competent court. The question must arise in respect of the land as defined in the Act, section 3 (10) i. e., land which is let or held for growing crops or as grove land or for pasturage. Land for the time being occupied by buildings or appurtenant thereto is not land. And the land must be the subject-matter of the suit or proceeding.

<sup>1</sup> *Bhairo Kumar Prasad v. Markande Gur*, 1939 A. L. J. 620—1939 B. D. 444.

Under section 271 of the Act of 1926, three specific issues as to proprietary title were mentioned in order to make sections 271-272 applicable, viz., where in a suit under section 44 (section 180 of this Act) or in which the plaintiff alleged the defendant to be his tenant the latter set up in himself proprietary title to the land and denied the position as tenant or trespasser, (b) where in a suit under Chapter XIV (Chapter XII in this Act,) the defendant pleaded that the plaintiff had not the proprietary right entitling him to institute the suit and (c) where in a suit under section 121 (present section 59), a dispute as to the proprietary right in the land was raised. All these three classes of issues will raise questions of proprietary right under this section, which is however wider and more general than section 271. The rulings under the Act of 1926 are therefore still applicable; for instance where in a suit under the old section 44, the civil court to which the issue of proprietary title was referred found against the person setting up the title, the latter could not turn round and claim to have been admitted to the tenancy of the land.<sup>1</sup>

The expression "in any suit or proceeding in a revenue court" is very wide, but it is submitted, is confined to one under the Act, that is, to one mentioned in Schedule IV. There may be other suits or proceedings in revenue courts which fall or might fall outside that Schedule, and the section will not touch them.

3. The expression "a question of proprietary right is raised" is wide enough to include a plea of *jus tertii* to the land. If this view is correct the decisions to the contrary on the expressions used in the earlier acts are now wrong.<sup>2</sup> Under the Agra Act of 1926, a question of proprietary right must have arisen between the parties claiming such right in the court of first instance and must have been in issue in the appeal.

It was held that a question of proprietary title was raised where the respondent was ready to support a judgment on the question of proprietary title.<sup>3</sup>

A question of proprietary title was said to be raised when the defendant in a suit for arrears of rent said that he held no longer as tenant but as sub-proprietor under a settlement made direct with him by the Settlement Officer<sup>4</sup>; or where in such a suit or in one for ejectment he pleaded that the plot had been allotted to him on a perfect partition between himself and the plaintiff<sup>5</sup>; or that the plot was in his proprietary title<sup>6</sup>; or that he had acquired title by adverse possession;<sup>7</sup>

<sup>1</sup> *Mahadeo Prasad v. Bansidhar*, XVII U. D. 235=1936 R. D. 265.

<sup>2</sup> *Ramadhar v. Partab Narain Singh*, XII U. D. 121=12 L. R. Rev. 237; *Baij Nath Rai v. Subarna Kuari*, 1934 A. L. J. 655=1934 A. I. R. All. 654=XV U. D. (B. C.) 118=15 L. R. Rev. 426=18 R. D. 257; *Rival Singh v. Hira*, 1940 R. D. 11 (H. C.)

<sup>3</sup> *Manna Lal v. Fateh Singh*, 39 I. C. 958=3 R. and Cr. L. J. 206; *Lachmi Narain v. Sardar Kuari*, B. R. 4 of 1919=III U. D. 29, *Shao Baluk Singh v. Bhirsu Singh*, IV U. D. 281

<sup>4</sup> *Bisheshwar v. Sugundhi*, 1 All. 366

<sup>5</sup> *Asin Mewa Ram v. Kishan Behari*, B. R. 10 of 1903.

<sup>6</sup> *Sakhawat Ali v. Suraj Prasad*, 14 A. L. J. 140.

<sup>7</sup> *Muhammad Mohsin Khan v. Shao Prasad*, 2 U. P. L. R. (B. R.) 35=IV U. D.



or that he held as *sir*<sup>1</sup>; or how much of the *sir* in dispute between co-sharers was of one of them;<sup>2</sup> or in a suit for ejectment under section 58(a) of the Act of 1901 (now section 175) that the defendant held the land in *malikana* (proprietary) rights, for which she paid neither rent nor revenue,<sup>3</sup> or that defendant is the mortgagee of proprietary rights,<sup>4</sup> but not when the defendant in a suit for ejectment pleads that he holds under an unexpired lease,<sup>5</sup> or that the defendant in a suit for ejectment cultivates the land as co-sharer<sup>6</sup> or where in a suit for ejectment the defendant pleads that he holds under a lease from some other person and that the plaintiff has no right to sue<sup>7</sup>; or where in a suit for arrears of revenue by a co-sharer or muafidar, or for profits, the defendant or one of the defendants denies the title of the plaintiff or pleads that it has been destroyed by twelve years' adverse possession; or where the defence is that the plaintiff is not a co-sharer but a tenant,<sup>8</sup> or where though admitting the proprietary title of a co-sharer his right to proprietary possession is denied.<sup>9</sup> Where in a suit for arrears of rent brought by a mortgagee, the defence is that the mortgage has been redeemed and the plaintiff has no right to sue, a question of proprietary title is raised.<sup>10</sup>

Where in a suit to eject a tenant under section 58 (a) of the Act of 1901, the defendant pleaded that she held *malikana* (or proprietary) rights in the land and that she paid neither rent nor revenue, and the first court found in favour of the latter contention, a question of proprietary title was held to be involved.<sup>11</sup>

Where in an ejectment suit from land said to be *sir*, both parties claim ownership of it, and defendant says that it was mortgaged by him to plaintiff and he has redeemed it from him a question of proprietary title is raised.<sup>12</sup>

Where two co-sharers divide a plot, assigning parts of it exclusively to each of them, and one of them does not give up possession of the plot assigned to the other and on a suit by this other to eject him as

<sup>1</sup> *Ramjas v. Muthai Lal*, 1 L. R. Rev. 28=III U. D. 656=6 Rev. and Cr. L. J. 67.

<sup>2</sup> *Abu Jafar v. Muhammad Kasim*, 1930 A. I. R. All. 657=11 L. R. Rev. 270.

<sup>3</sup> *Raj Bahadur v. Jasoda*, 25 A. W. N. 252=2 A. L. J. 786.

<sup>4</sup> *Kalanmal v. Samand*, 11 A. L. J. 118=35 All. 157; *Arjun v. Prag*, III U. D. 546; *Dhirja v. Mithan Lal*, 74 I. C. 914 (A.); *Nanjadik v. Ram Julian*, VI U. D. (H. C.) 32=1923 R. C. 505=5 L. R. Rev. 14; *Ramjas v. Ram Palal*, 11 Rev. and Cr. L. J. 30=VI U. D. 275; *Lulman v. Shankar Singh*, 1934 A. L. J. 746=1934 A. I. R. All. 832=4 A. W. R. 304=XV U. D. (H. C.) 77=15 L. R. Rev. 401=19 R. D. 253.

<sup>5</sup> *Surajmal v. Hira*, 37 All. 94.

<sup>6</sup> *Indar v. Deojit*, 4 A. L. J. 1.

<sup>7</sup> *Har Prasad v. Tufammul Husain*, 16 A. L. J. 239=4 Rev. and Cr. L. J. 118, dissected from in *Kundin v. Jawahir*, 1 L. R. Rev. 108=IV U. D. 102.

<sup>8</sup> *Kulsum v. Bandi*, 8 A. W. N. 65.

<sup>9</sup> *Ram Sewak v. Tika*, 8 L. R. Rev. 353=IX U. D. 32=VIII U. D. 125=1927 R. C. 398.

<sup>10</sup> *Girwar Lal v. Kallan*, 8 L. R. Rev. 202=VIII U. D. (H. C.) 189=1927 B. C. 178.

<sup>11</sup> *Raj Bahadur v. Jasoda*, 2 A. L. J. 786=25 A. W. N. 259.

<sup>12</sup> *Khutur v. Bhola Nath*, XIV U. D. 268=14 L. R. Rev. 506.

a trespasser, he claims as a co-sharer, a question of proprietary title is raised.<sup>1</sup>

Where in a suit for ejectment of a subtenant by the plaintiff alleging himself to be the tenant-in-chief, the zamindar intervenes, is made a party and pleads that he realises the rent from the defendant, a question of proprietary title is raised.<sup>2</sup>

Where in a suit for ejectment from a plot against a tenant on the ground that he had allowed a third person to build a house on the holding the plea was that the house was not built on the holding but on a plot of which the plaintiff was not the zamindar it was held that no question of proprietary right was raised in respect of the plot from which the ejectment was sought.<sup>3</sup>

A plea that the defendant is a rent-free grantee not coming under section 192 does not raise a question of proprietary title. But if the plea is that he is proprietor, or under-proprietor, under section 192, the case may come under this section.

Where the right of a person to represent a deceased owner is denied in a suit for profits, section 286 will apply.<sup>4</sup>

Where proprietary rights are set up only as regards a part of the land, and the trial court dismisses the whole suit, there ought to be two appeals, one to the District Judge and one to the Commissioner as regards the two parts of the land.<sup>5</sup>

A person recorded as mortgagee of a share although part of it has been redeemed, is not recorded as having the particular proprietary right which would entitle him to maintain a suit under section 226.<sup>6</sup>

4. Suit under Chapter XII—Whether the plaintiff is or is not recorded as having the proprietary right entitling him to institute the suit is immaterial, and therefore sub-section (3) of section 201 of Act II of 1901 and the rulings thereunder are of no effect now. The expression 'the proprietary right entitling him to institute the suit' occurring in the Act of 1926 is not exactly the same as "proprietary

<sup>1</sup> *Daljit v. Kacharu*, 57 All. 387—1935 A. I. R. All. 83—4 A. W. R. 683—152 I. C. 192—XV U. D. (H. C.) 260—18 R. D. 479.

<sup>2</sup> *Abdul Rauf v. Masihuddin*, 1928 A. I. R. All. 409—IX U. D. (H. C.) 172.

<sup>3</sup> *Muh. Shabbir v. Zainul Abidin*, 1927 A. I. R. All. 564—VII U. D. (H. C.) 72—11 R. D. 581.

<sup>4</sup> *Madad Ali v. Shamsher Ali*, 63 I. C. 103—4 U. P. L. R. 9.

<sup>5</sup> *Jackson v. Sarjit Singh*, 15 A. L. J. 6—3 Rev. and Cr. L. J. 11.

<sup>6</sup> *Jwala Prasad v. Irshad Muhammad Khan*, 46 All. 512—1925 A. I. R. All. 50—VI U. D. (H. C.) 107—10 Rev. and Cr. L. J. 169—5 L. R. Rev. 146—1924 R. C. 121, 184—83 I. C. 245—9 R. D. 388.

right, for a person may be a proprietor and yet he may not have a right to sue for profit during a particular year.<sup>1</sup>

There is no difficulty as regards suits under section 226 (by a co-sharer, for arrears of revenue paid on account of another co-sharer), section 227 (by a muafidar or assignee or revenue for arrears of revenue due to him as such), section 228 (by a taluqdar or other superior proprietor for arrears of revenue or rent due to him as such), section 230 (by a co-sharer for profits against a lambardar) and section 231 (by a co-sharer for settlement of accounts and his share of the profits against another co-sharer). If the plaintiff's status as muafidar, assignee of revenue, taluqdar or superior proprietor is disputed, the Court may adopt the procedure of section 286. A Single Judge has however held that if the plaintiff in a suit under section 226 is a recorded co-sharer, the defendant cannot plead that he has not the proprietary title until he can establish the fact in a proper civil suit.<sup>2</sup> A suit under section 224 (by a lambardar for arrears of revenue, village expenses and other dues) presents some difficulties. If the plaintiff is not recorded as lambardar, can a Revenue or Civil Court try the question whether he is a lambardar? The definition of lambardar in section 4, Land Revenue Act, and the rules framed by the Board of Revenue for the appointment of lambardars show that the person appointed must be a co-sharer in the mahal and in possession of his share; but there have been cases in which thekadars and mortgagees in possession who cannot really be said to be co-sharers (a thekadar being only a tenant) have been appointed as lambardars. If a person suing as lambardar is not recorded as a lambardar, we find it laid down in section 233 (b) and (c), Land Revenue Act, that a Civil Court cannot entertain the claim of any person to such office. Hence it seems that sub-section (1) is not applicable to such a case. The Revenue Court will have to decide that question incidentally as any other question of fact in the suit for the purpose of disposing of it. What the section probably means is that in such a case if the plaintiff is not recorded as a co-sharer and his status as a co-sharer is denied, the Court may adopt the procedure of sub-section (1). Of course, it is possible that a person appointed as lambardar is by mistake not recorded as such. There is no bar to the trial of the question whether the plaintiff was *in fact* appointed as lambardar, though there is to the question whether he is *entitled* to be so appointed. Hence, in the case of such a mistake, the procedure of sub-section (1) seems to be open.

5. Where of two parties claiming *sir*, one is in possession in virtue of some supposed right or claim and is neither a sub-tenant nor a trespasser a suit under sections 175/179 does not lie. A right to hold *sir* disputed by two rivals is a question of proprietary title excluded by section 286 Exp. II from a Civil Court jurisdictions.<sup>3</sup>

6. Question not previously determined This is essential.

<sup>1</sup> *Muhammad Abdul Jalil Khan v Ubaid Ullah Khan*, 1932 A. I. R. All. 169=1931 A. L. J. 1076.

<sup>2</sup> *Om Prakash v. Juhal Kishore*, 1934 A. I. R. All. 347=XV U. D. (II C) 114=15 L. R. Rev. 383=18 R. D. 257

<sup>3</sup> *Manraj Singh v. Jang Bahadur*, 16 L. R. Rev. 137=XV U. D. 550.

7. Court shall frame an issue and submit record to competent Civil Court.—This is imperative<sup>1</sup> The parties cannot be referred to a civil suit nor can the Revenue Court try an issue as to proprietary title. Section 10, Civil Procedure Code, does not apply. The proper course is an issue<sup>2</sup>

In Oudh it was held that where the plaintiff is recorded as having proprietary rights entitling him to institute the suit, the Revenue Court is not competent to go behind the record and receive evidence and itself try the question of proprietary title.<sup>3</sup>

In a case of a real and *bona fide* dispute upon the question of proprietary title, an issue must be framed and submitted to the Civil Court for decision and should not be decided by the Revenue Court itself. A decision by the Revenue Court on such question is *ultra vires* and can not operate as estoppel or *res judicata*.<sup>4</sup>

If the Civil Court decides the issue *ex parte*, it has jurisdiction under the provisions of section 141 and O. 9 of the Code of Civil Procedure to set aside that decision and proceed to decide on the merits.<sup>5</sup>

The Court to which an issue is sent must be competent to entertain a suit of the value of the property the title to which is in question.<sup>6</sup> There the revenue court sent the issue to the Munsif whose pecuniary jurisdiction was upto Rs. 4,000 only but the value of the property in dispute in the suit was much more, though the valuation of the issue sent for trial was only Rs. 700. The High Court directed the proceedings to be transferred to the Subordinate Judge.

8. Explanation I.—*Untenable plea*. This gives effect to the Board's view.<sup>7</sup>

Where the claim to proprietary title is clearly untenable, section 286 does not apply.<sup>8</sup>

<sup>1</sup> *Ewaz Singh v. Dan Kuar*, 1935 A. L. J. 408=1935 A. I. R. All. 503=XVI U. D. 119=1935 R. D. 93=451 I. C. 927 ; *Ram Gopal v. Babu Ram*, XX U. D. 336=1939 R. D. 128.

<sup>2</sup> *Garg Din v. Debi Charan*, 1930 A. L. J. 284=14 R. D. 151.

<sup>3</sup> *Salih Ram v. Bhudar Singh*, XVII U. D. (H. C.) 59=1936 R. D. 93, relying on *Gajadhar Singh v. Har Prasad*, 1926 A. I. R. Oudh 426=94 I. C. 693 ; *Durga Prasad v. Haza Singh*, 33 All. 799=3 A. L. J. 1025=11 I. C. 16

<sup>4</sup> *Muh. Ubaidullah Khan v. Muh. Abdul Jalil Khan*, 1937 All. 628=1937 A. I. R. All. 481=1937 A. L. J. 979=1937 R. D. 302.

<sup>5</sup> *Basant Lal v. Chirangi*, 1934 A. I. R. All. 86=1934 A. L. J. 351=14 L. R. Rev. 884=17 R. D. 1051=XIV U. D. (H. C.) 135.

<sup>6</sup> *Dan Koor v. Ewaz Singh*, 53 All. 62=1931 A. L. J. 8=1931 A. I. R. All. 28=XII U. D. (H. C.) 3=11 L. R. Rev. 300=14 R. D. 654.

<sup>7</sup> In *Mannu v. Suchit*, III U. D. 650=1 L. R. Rev. 19=4 R. D. 447 ; *Dhanpati v. Chandrika*, IV U. D. 22=1 L. R. Rev. 67=6 R. D. 122.

<sup>8</sup> *Ram Munsoor v. Court of Wards*, 1941 R. D. 325.

9. Explanation II.—This overrides the rulings to the contrary.<sup>1</sup>

The explanation does not apply where the defendant's title is denied.<sup>2</sup>

A question of proprietary right does not include the question of nature of possession, *i. e.*, whether land is held as *sir* or *khudkasht*.<sup>3</sup>

Under the present explanation, the question must be as to the character of the land whether it is *sir* or *khudkasht* and not as to the character in which the land admitted to be of one of the characters is held. Hence a plea that the defendant holds as mortgagee of land admitted to be *sir* raises question of proprietary title.<sup>4</sup> Compare this with the case next cited.

Where the defendant assignee of mortgagor's rights under a usufructuary mortgage of zamindari including *sir* in a suit under section 180 claims certain land which is *sir* in the village as his *sir* a question of proprietary title was held not to arise in view of explanation II to this section.<sup>5</sup> The revenue court had in this case, a suit under section 180, referred an issue as to whether the defendant was proprietor, to the civil court and dismissed the suit on the latter's affirmative finding, and on appeal to the District Judge the finding so far as it affected the *sir* was challenged. The lessee after assigning his proprietary rights to the defendant had relinquished his previous rights as lessee in his favour. It was held that as no other issue regarding proprietary rights was raised before the District Judge, an appeal lay not to him but to the commissioner.

This is not reconcilable with the Board's view and seems to be wrong in view of the present explanation II.

10. Sub-section (2). It prescribes the civil court's duty. There is no separate appeal from the finding of the civil court, although the finding may be challenged on appeal from the decree, but not on revision from the revenue court decree based on such finding.<sup>6</sup>

11. Sub-section (3). The revenue court shall proceed to decide.—This is imperative and shows that when the revenue court has framed an issue and referred to a civil court, the suit is not over

<sup>1</sup> Such as *Dalchand v. Shamlu*, 2 A. L. J. 176=25 A. W. N. 46; *Binteshwari v. Gopul*, 35 All. 183; *Mihuraj of Benares v. Vijai Narain Singh*, B. R. 14 of 1914; *Hardat Singh v. Barsati*, V. U. D. 134=1922 R. C. 181=3 L. R. Rev. 265=1922 R. C. 181=6 R. D. 18, and other cases. The explanation was given effect to in *Net Ram v. Hargovind*, 1929 A. L. J. 289=1928 A. I. R. All. 764=131 I. C. 755=X U. D. (H. C.) 78=10 L. R. Rev. 97=13 R. D. 15. It does not apply to suits filed under Act II of 1901. *Jai Jai Ram v. Janaki*, 27 A. L. J. 864=10 L. R. Rev. 300=X U. D. (H. C.) 242=13 R. D. 563.

<sup>2</sup> *Daljit v. Kacheru*, 57 All. 387=1935 A. I. R. All. 83=4 A. W. R. 683=1934 A. L. R. 953=152 I. C. 192=XV U. D. (H. C.) 260=18 R. D. 479.

<sup>3</sup> *Bindraban Katiar v. Ganga Ram*, 1940 A. L. J. 573=1940 R. D. 274.

<sup>4</sup> *Ramakant Singh v. Beni Madho*, XIX U. D. 159=1938 R. D. 397.

<sup>5</sup> *Ram Chandra Singh v. Misri Lal*, 1937 All. 958=1937 A. L. J. 1204=1937 A. I. R. All. 790=1937 R. D. 532.

<sup>6</sup> *Satya Nidhan Banerji v. Muh. Huzabbar Ali*, 1931 A. L. J. 854=1932 A. I. R. All. 47=XIV U. D. (H. C.) 21=15 R. D. 681.

so far as it is concerned. When the civil court finding comes back, it has to decide accordingly.

12. **Res judicata.**—Where the defendant in a suit by a recorded co-sharer was not a recorded proprietor of the share in respect of which profits were claimed, the fact that he did not raise the question of proprietary title does not debar him from raising that question subsequently.<sup>1</sup>

The decision under section 286 on a question of title raised as contemplated by the section is *res judicata* in a subsequent civil suit between the parties,<sup>2</sup> even though the Court be of an Assistant Collector of the second class in a suit of a value less than Rs. 200, and the subsequent suit be of a larger value.<sup>3</sup> An *ex parte* decree for arrears of rent establishes the relation of landlord and tenant,<sup>4</sup> and the right of the plaintiff to sue alone.<sup>5</sup> An *ex parte* decree for arrears of rent of an Assistant Collector second class was held not to bar a suit for declaration of title of the tenant, the suit being directed to the civil court by an Assistant Collector first class under section 199 of the Act of 1901<sup>6</sup> (now this section.) Where the Collector as an appellate Court decides that *A* is a tenant and not proprietor, and *A* does not appeal to the District Judge, he cannot sue in a Civil Court for a declaration of his proprietary title.<sup>7</sup>

*A* mortgaged his zamindari to *B* and took back the land as tenant of *B*. *A* sued to contest a dstraint made by *B*. It was held that the mortgage had been discharged, and *B* had no right to hold the land as mortgagee. *B* now sued to recover possession as mortgagee. It was held that the Revenue Court decision did not operate as *res judicata* as to the discharge of the mortgage as there the suit was by a tenant against his landlord, and not by a landlord against his tenant, and the only

<sup>1</sup> *Abdullah Khan v. Bundi*, 11 I. C. 710.

<sup>2</sup> *Salik Dube v. Deoki Dube*, 2 A. L. J. 334=27 A. W. N. 1; *Beni Pande v. Koushal Keshore*, 29 All. 160=4 A. L. J. 53=27 A. W. N. 6; *Jhamola v. Hanwant Singh*, 1922 A. I. R. All. 129=20 A. L. J. 340=8 Rev. and Cr. L. J. 139, 190=V U. D. (H. C.) 41=3 L. R. Rev. 177=66 I. C. 915=4 U. P. L. R. 113=7 R. D. 107; *Iswar Dutt v. Ram Kirpal*, XII U. D. 35=15 R. D. 215; *Amar Singh v. Gobind Ram*, 49 All. 606=25 A. L. J. 387=1929 A. I. R. All. 717=VIII U. D. (H. C.) 119=8 L. R. Rev. 122=1927 R. C. 108=101 I. C. 501=11 R. D. 615, but see *Sarju Prasad v. Mahadeo Prasad*, 54 All. 786=1932 A. I. R. All. 483=1932 A. L. J. 511=16 R. D. 400.

<sup>3</sup> *Shahzada Singh v. Muhammad Ahmad Ali Khan*, 6 A. L. J. 917=32 All. 8=3 I. C. 954.

<sup>4</sup> *Mu. Karamat Ali Khan v. Ganesh Lal*, VIII U. D. (H. C.) 123=101 I. C. 516=1927 R. C. 113=11 R. D. 620.

<sup>5</sup> *Sardar Singh v. Bil Kuer*, 7 L. R. Rev. 406=VII U. D. (H. C.) 230=1926 R. C. 511=98 I. C. 981=1927 A. I. R. All. 145=10 R. D. 315.

<sup>6</sup> *Sarabjit Mal v. Rum Khelawan Mal*, 8 Rev. and Cr. L. J. 201=66 I. C. 714 (A)=4 U. P. L. R. 90.

<sup>7</sup> *Kalyan v. Tikiram*, 2 Ind. Ca. 353; *Rahmat Khan v. Talib Husain*, II U. D. 761.

point in issue was the discharge of the mortgage and not the proprietorship of the land.<sup>1</sup>

If the Court does not act under sub-section (1), its finding on title would not have the effect of *res judicata*, *Taufiq-un-nissa v. Taskin Banu*,<sup>2</sup> in which case the question of title was not decided in the previous suit for ejectment. What the Assistant Collector had done was to hold that question had been decided by an earlier decision of a competent Court. As a matter of fact, the final decision in the earlier suit showed that the question was left undetermined.

Where a Revenue Court in a suit for ejectment holds that the proprietary title of the plaintiff is not proved, the decision operates as *res judicata* as to other lands, which were not the subject of the suit, but as to which the plaintiff's title was based on the same transfer or transaction.<sup>3</sup>

Where the parties have litigated in a civil court whose decision was in a prior profits case before the revenue court which decided on its basis, the decision is *res judicata* in a subsequent suit for profits in which the shares of the parties are in dispute and no fresh issue need be sent to the civil court.<sup>4</sup>

13. **Sub-section (4).**—*Cf.* the opening sentence of section 200 of Act II of 1901. In the case mentioned an appeal lies to Civil Court. To come under this sub-section an issue as to proprietary or under-proprietary title must have been referred to a competent Civil Court and decided. It is not necessary, as it was under the old Act, that in the appeal also the question should be in issue.<sup>5</sup>

Where on an issue being referred, the parties compromise deciding between them the ownership of the land in dispute in a suit under section 180 and the Revenue Court after the return of the finding holds that the plaintiff could not sue alone as other co-sharers in the land existed, this is a finding that the compromise was entered into by persons incompetent to compromise, and the issue as to proprietary title is still in issue. An appeal will therefore lie under sub-section (4) to the District Judge.<sup>6</sup>

14. **Question of proprietary right not raised.**—It has been held that if a tenant does not set up a proprietary title when he had the chance to do so in a suit of the nature contemplated in section 286 he will not be allowed in any subsequent civil or revenue proceeding to agitate that question.<sup>7</sup>

<sup>1</sup> *Suraj Kuar v. Chat Ram*, 41 All 369=17 A. L. J. 352=49 I. C. 591=5 R. and Cr. L. J. 154=1 U. P. L. R. 193.

<sup>2</sup> 15 I. C. 239.

<sup>3</sup> *Buru Mal v. Sunder Lal*, 21 A. L. J. 330=1924 A. I. R. All. 10=1923 R. C. 105=7 U. D. (II C.) 169=4 L. R. Rev. 165=9 R. and Cr. L. J. 191=72 I. C. 165=7 R. D. 87.

<sup>4</sup> *Shiva Bans v. Rajman*, 1938 R. D. 441.

<sup>5</sup> *Rudder v. Chheda*, 1941 R. D. 693, pointing out difference between the two Acts.

<sup>6</sup> *Parmanand Lal v. Acharbar*, XVII U. D. 85.

<sup>7</sup> *Behari v. Sheobalak*, 29 All 601 (where a person alleged to be a tenant in a suit for ejectment allowed a decree to be passed against him *ex-parte*); *Lal Singh v. Khalq Singh*, 6 A. L. J. 259 (where in suit for arrears of rent the defendant, alleged to be a tenant, did not set up the proprietary right which he sought to claim subsequently).

15. No suit for refund lies for money paid under a decree for profits in favour of recorded co-sharers,<sup>1</sup> or to restrain execution of such a decree.<sup>2</sup>

A suit for arrears of rent for less than Rs. 50 comes within the sub-section and if a question of proprietary title is put in issue, the remedy of the aggrieved party is an appeal to the civil court and not a revision to the Board.<sup>3</sup>

The restrictive expressions used in sub-section (4) should be noted. An appeal will be to the Civil Court from the Revenue Court decision only when (1) an issue as to proprietary right was raised in the suit or proceeding, (2) and was referred to a Civil Court and decided by it. A case where a Revenue Court does not refer an issue of proprietary right to a Civil Court is not mentioned. The appeal would go to a Revenue Court which will correct the Lower Court's error and refer or have the issue referred.

16. Rules to give effect to this section made by the Provincial Government are as follows :—

16. A revenue court shall, before forwarding the record to the civil court under the provisions of section 286 of the Act, require the party who has raised the question of proprietary right in the land in suit to pay the process-fees for the issue of notices by the civil court for the attendance of the parties between whom such question has arisen and shall note in its order forwarding the record to the civil court that such process-fees have been realized. Such fees shall be charged in court-fee stamps according to the scale prescribed in Chapter XVII of the General Rules, (Civil), 1934 or in Chapter III (Rule 166) of the Oudh Civil Rules 1928, as the case may be.

17. Where a record is received by a civil court with a notice that the necessary process-fees have been paid in the court which has forwarded the record the court receiving the record shall issue notices to both parties without cost as to the first date of hearing fixed by it.

18. Where an issue on a question of proprietary right is framed by a revenue court under the provisions of section 286 (1) of the Act it shall submit the entire record of the case to the district judge who shall forthwith forward it to the competent civil court for the decision of that issue.

19. The date of despatch of the record to the civil court shall be entered in red ink by the *Ahlmad* in the remarks column of the *mislband* register. When the record is received back from the civil court together with

<sup>1</sup> *Mahabir Prasad v. Basant Lal*, 17 A. L. J. 1028  
<sup>2</sup> *Shabbir Husain v. Ghulam Husain*, 1923 A. I. R. All. 437—72 I. C. 276—5 L. R. Rev. 144—10 Rev. and Cr. L. J. 181—1923 R. C. 216—8 R. D. 439.  
<sup>3</sup> *Shib Karan Singh v. Jawa Kunwar*, 1936 D. R. 29—XVII U. D. 14.



its finding on the issue the date of return of the record shall be similarly entered in red ink in the remarks column of the *misband* register.

20. Before the record is consigned to the record room the *Ahlmad* of the court shall classify the papers on the reference file added by the civil court and put them in *nathi* A or *nathi* B, as the case may be, and shall note the classification against each paper entered in the general index of the reference file received from the civil court.

287. If in any appeal filed under the provisions of sub-section (4) of section 286 the appellate court has not before it all the material necessary for the determination of the question of proprietary right it may either,

(a) remand the case to the civil court which decided the issue on the question of proprietary right, or

(b) frame a fresh issue with respect to such question and refer it for trial to any subordinate court of competent jurisdiction.

1. The section reproduces in effect section 272 of the Act of 1926 and corresponds to section 201 of the Act of 1901 and to section 208 of the Rent Acts.

Proprietary right includes under-proprietary right, (*vide* section 246.)

2. If in any appeal, etc.—The operation of the section is confined to an appeal to a Civil Court from a decision of a Revenue Court which had referred an issue as to proprietary right to a Civil Court and which had decided the case accepting the finding of the Civil Court.

#### *Questions of tenant right in civil courts.*

288. (1) If in any suit relating to agricultural land instituted in a civil court, any question regarding tenant right arises and such question has not previously been determined by a court of competent jurisdiction, the civil court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue court for the decision of that issue only.

*Explanation*—A plea of tenancy which is clearly untenable and intended only to oust jurisdiction of the civil court shall not be deemed to raise a plea of tenancy.

(2) The revenue court after re-framing the issue, if necessary, shall decide such issue only, and return the record together with its finding thereon to the civil court which submitted it.

(3) The civil court shall then proceed to decide the suit, accepting the finding of the revenue court on the issue referred to it.

(4) The finding of the revenue court on the issue referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the civil court.

1 This corresponds to section 273 of the Act of 1926, substituting "any question regarding tenant right arises" for "the defendant pleads that he holds such land as the tenant of the plaintiff or of a person in possession holding from the plaintiff" and adding "and such question has not previously been determined by a court of competent jurisdiction," giving effect to current views.<sup>1</sup>

Section 273 of the Act of 1926 corresponded to section 202 of Act II of 1901.

2. While section 286 provides for revenue cases where a question of proprietary title is raised, this section provides for civil cases where a plea of tenancy is set up.

The section applies to a civil suit for ejectment of a person taking possession without consent and for mesne profits where the defendant sets up tenancy.<sup>2</sup> The section lays down only a rule of procedure.<sup>3</sup> A *thekadar* defendant could raise an issue under the section.<sup>4</sup>

Where a defendant pleaded that he was the tenant of a person other than the plaintiff, he had also to allege that such person held the land from the plaintiff and was or had been in possession.<sup>5</sup>

It would not comprise a case where the person who is said to have let him in was holding the land adverse to the plaintiff or against his wishes. A *lambardar* can hardly be said to hold from a co-sharer.

The expression 'any question regarding tenant right' is very general, and may include a question regarding the relation of landholder and tenant or the class of tenancy or any of the incidents of tenancy, or ejectment, surrender or abandonment, etc. But the issue that has to be referred is on the plea of tenancy, which *prima facie* means only a plea as to the relationship of landholder and tenant.

3. And such question has not been previously determined by a court of competent jurisdiction — This is now made expressly essential. The question of tenant right must have been determined and by a court of competent jurisdiction. A Civil Court cannot except on appeal, determine a question of tenant right; and if it has done so, the question will not be said to have been previously determined by a competent court, so as to bar the application of the section. The decision must be

<sup>1</sup> *Sarju v. Bindeshari*, 11 A. L. J. 691. See also *Lala Singh v. Raghubir Narain*, 1928 A. I. R. All 366—IX U. D. (H. C.) 161—9 L. R. Rev 138—116 I. C. 275—12 R. D. 223.

<sup>2</sup> *Muh. Muslim v. Maharania*, 50 All 130—25 A. L. J. 545—1927 A. I. R. All. 369—VIII U. D. (H. C.) 224—1927 R. C. 273—103 I. C. 271—8 L. R. Rev. 250—11 R. D. 180.

<sup>3</sup> *Babu Ram v. Ram Narnin*, 1930 A. L. J. 1251—14 R. D. 656.

<sup>4</sup> *Mahund Swarup v. Kishunchand Singh*, 1935 A. I. R. All 382—XVI U. D. 132—1935 R. D. 111.

<sup>5</sup> See *Muh. Yaqub v. Beohu*, 3 L. R. Rev. 21—8 R. and Cr. A. L. J. 66—65 I. C. 251—5 R. D. 38.

as to the tenant right and not as to the character of the land, *e. g.*, whether or not it was agricultural land, or as to the class of tenancy, *e. g.*, whether the tenant is of a particular class.

4. **The Civil Court shall.**—The section is imperative, and if the courts below have tried the question themselves, the case will be sent back to follow the procedure of the section. A class of cases in which the section is applicable is where a zamindar or landholder sues to eject a person as a trespasser and the defendant sets up the plea of tenancy.

Now it is not necessary for a defendant setting up a tenancy in the land to say that he is plaintiff's tenant in respect of the land, as he had to do under the repealed enactments<sup>1</sup> But he must raise a question of tenant right, and if he does not, the section will have no application.<sup>2</sup> A claim as to joint tenancy with the plaintiff will raise a question regarding tenant right.<sup>3</sup>

A mortgaged his zamindari to *B* and then sold it to *C* who redeemed the mortgage. *C* sued in a Civil Court to eject a cultivator *D*. *D* pleaded that he was a tenant of *B* and had acquired occupancy rights, but did not deny *C*'s title by purchase or redemption. *Held*, this section applied.<sup>4</sup> A plea that defendant is tenant of plaintiff and other co-sharers does not render the section inapplicable.<sup>5</sup>

A plea in a suit to cancel a lease, on the ground of the lambardar's want of authority, to the effect that he granted it with the consent of all the co-sharers, is a plea under the section.<sup>6</sup>

The procedure laid down here should be followed. The procedure is compulsory and section 291 is not applicable.<sup>7</sup> It is incumbent on the court of first instance to act according to the section,<sup>8</sup> and not to return the plaint for presentation to the proper court,<sup>9</sup> and, if it has omitted to do so, the court of first or second appeal may either cure the defect by proceeding according to the section, or return the record to the original court for it to so act.<sup>10</sup> The decision of the Civil Court

<sup>1</sup> *Rikhas Rai v. Sheo Pujan Singh*, 7 A. L. J. 960.

<sup>2</sup> *Har Bilas v. Dalla*, XIV U. D. (H. C.) 103=14 L. R. Rev. 670 will hold good.

<sup>3</sup> Under the Act of 1926, such a claim did not fall under section 273 of the Act, *Ram Kali v. Kamta Prasad*, 1934 A. I. R. All. 404=XV U. D. (H. C.) 32=18 R. D. 102.

<sup>4</sup> *Dalip Singh v. Udho Singh*, II U. D. 699. See also *Pashpati Vizia Nand Bahadur v. Hargovind Rai*, 1931 A. I. R. All. 211=122 I. C. 597=15 R. D. 336.

<sup>5</sup> *Bhauni v. Ram Dayal*, 1921 A. I. R. All. 58=19 A. L. J. 850=8 Rev. and Cr. L. J. 2=3 L. R. Rev. 10=IV U. D. 744=64 I. C. 426=6 R. D. 334.

<sup>6</sup> *Kali Din v. Ram Pat*, 1923 A. I. R. All. 534=9 Rev. and Cr. L. J. 185=1923 R. C. 172=73 I. C. 953=V U. D. (H. C.) 171=4 L. R. Rev. 167=7 R. C. 93.

<sup>7</sup> *Bhauni v. Ram Dayal*, 19 A. L. J. 850=IV U. D. 744.

<sup>8</sup> *Kura Singh v. Chhallu*, 8 A. L. J. 320=10 I. C. 849; *Narain Sarup v. Nanda*, 13 A. L. J. 249=28 I. C. 568.

<sup>9</sup> *Raghunath v. Ganesh*, 1 L. R. Rev. 38.

<sup>10</sup> *Madari v. Kamar-un-nissa*, 24 A. W. N. 113=1 A. L. J. 212; *Mare v. Gauri Sahai*, 25 A. W. N. 46; *Mahadeo Prasad v. Ramdhari*, 2 I. C. 455; *Chuman v. Nanhe Singh*, 1930 A. L. J. 1085=1930 A. I. R. All. 795=XI U. D. (H. C.) 285=11 L. R. Rev. 254=14 R. D. 517.

should follow the final decision of the Revenue Court,<sup>1</sup> and it cannot object to the validity of the decision.<sup>2</sup>

Nor can it on review reverse its previous decision, based on the Revenue Court finding, on the ground that it had committed a mistake in referring an issue to the Revenue Court as the suit did not relate to an agricultural holding.<sup>3</sup>

5. **Where the section does not apply.**—The section has no application where the decision on the question that may be remitted will have no effect on the decision of the Civil Court.<sup>4</sup> There, in a suit for redemption, one of the pleas was that the defendant held the land not as mortgagee but as tenant. The courts found that the plaintiff had failed to prove the mortgage he sought to redeem. The suit fails on that finding.

The section is not applicable to a suit by a Hindu son for cancellation of a perpetual lease of a fixed-rate holding granted by his father on the ground of absence of any legal necessity for it; an unauthorised lease by the manager of a joint family is not a lease from year to year so as to be valid to that extent.<sup>5</sup>

6. **Where defendant cannot plead tenancy**—Where it is no longer open to a defendant to plead tenancy, he having denied his position as tenant in a previous suit, this section has no application.<sup>6</sup>

*A* was *B*'s tenant. *B* sued to eject him but his suit was dismissed by the first Court and decreed in appeal. The Board of Revenue dismissed the suit. *B* obtained possession in execution of the first appellate decree. *A*'s application to execute the Board's decree was dismissed as time-barred. Then *B*'s son sued to eject *A* as a trespasser. *A* pleaded an existing tenancy. The proper course is to refer an issue to Revenue Court.<sup>7</sup>

7. **Revision.**—No reversion lies from an order under this section.<sup>8</sup>

8. **Agricultural land.**—Before referring, the Court has to satisfy itself that the suit relates to an agricultural land.<sup>9</sup> The Revenue Court to which an issue is referred cannot go into that question.<sup>10</sup>

<sup>1</sup> *Chaoli v. Kallu*, 11 U. D. 725.

<sup>2</sup> *Suraj Ghulam Singh v. Chab Lal Singh*, 14 I. C. 347; *Shiamlal v. Anantram*, 17 I. C. 302.

<sup>3</sup> *Kishan Chand Singh v. Mukand Sarup*, 1931 A. L. J. 889=1931 A. I. R. All. 91=XII U. D. (H. C.) 39=132 I. C. 815=11 L. R. Rev. 362=15 R. D. 16.

<sup>4</sup> *Gauri Rai v. Manorath*, 10 A. L. J. 513=17 I. C. 520.

<sup>5</sup> *Banwari v. Ram Ratan*, 1929 A. I. R. All. 387=119 I. C. 436=X U. D. (H. C.) 234=10 L. R. Rev. 293=13 R. D. 396.

<sup>6</sup> *Rajmangal v. Mackinnon*, 18 I. C. 875.

<sup>7</sup> *Bhawan v. Madan Mohan*, 38 All. 533=14 A. L. J. 734.

<sup>8</sup> *Dhan Dei v. Chotey Lal*, 39 A. 254=15 A. L. J. 227=38 I. C. 828.

<sup>9</sup> *Chotey Lal v. Dhan Dei*, III U. D. 285; *Kishan Chand Singh v. Mukand Sarup*, 1931 A. I. R. All. 91=XII U. D. (H. C.) 39

<sup>10</sup> *Id.*, *Sher Alum Khan v. Muhammad Said Khan*, III U. D. 123=1 U. P. L. R. (B. R.) 11=5 Rev. and Cr. L. J. 17=52 I. C. 228=5 R. D. 527.

Where a Civil Court in a previous suit held the land not to be agricultural and decided it on that basis, the question is *res judicata* in a subsequent suit.<sup>1</sup>

A lease for the collection of grazing dues, although it was a theka, and constituted the thekadar a tenant, was held not to be in respect of land.<sup>2</sup> This is no longer true, as land includes land let for pasturage. Land let for tethering cattle, building, growing vegetables, is not land.<sup>3</sup> But see the decision on Letters Patent Appeal cited in footnote 5 below.

The section does not apply when defendant admits his tenancy under plaintiff but not for agricultural purposes.<sup>4</sup>

Where the Munsif refers an issue under the section and dismisses the suit for ejectment as trespasser on the revenue court finding that defendant is plaintiff's tenant, and on appeal the District Judge affirms the revenue court finding on the merits, it cannot be urged in second appeal that the land is not an agricultural land and so no reference should have been made, as the principle of section 290 empowers the District Judge to decide the case on the merits.<sup>5</sup>

**Suit relating to agricultural land.**—Mr Justice Piggott in, *Dhan Det Kunwar v. Chotu Lal*,<sup>6</sup> said "it does not seem to me possible to read the opening words of section 202 of the Tenancy Act of 1901 as if they were limited to suits instituted in a Civil Court relating to an agricultural holding, and to nothing else. The words used are wide and general, and I do not feel justified in limiting their application. I conceive that if a suit be instituted in a Civil Court, part of which relates to an agricultural holding and part to other matters, the provisions of section 202 must be applied to so much of the suit as does relate to the agricultural holding . . . Finally, I can see no good reasons for taking the words "an agricultural holding," as used in this section, out of the general principle that words in the singular number involve the plural. I think the section applies equally to suits relating to a single agricultural holding and to a number of agricultural holdings." The learned judge then proceeds to observe that a suit for possession of zamindari villages alleged by the defendant to be held under a theka is a suit relating to a number of agricultural holdings (*i. e.*, the holdings of each individual cultivator) and therefore within the purview of section 202 of the Act of 1901. Mr. Justice Walsh, on the other hand, was of opinion that where a suit is for possession of zamindari property against a person alleged by the plaintiff to be his discharged servant who on dismissal refused to give up possession, it is not a suit

<sup>1</sup> *Krishna Kant v. Basdeo*, VI U. D. 346—6 L. R. Rev. 18—1925 R. C. 12—9 R. D. 296.

<sup>2</sup> 39 All. p. 685.

<sup>3</sup> *Bhanes Chander Singh v. Babu Nandan Singh*, 1935 A. I. R. All. 562—1935 R. D. 63—XVI U. D. 202.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Babu Nandan Singh v. Phunesh Singh*, 1937 A. I. R. All. 105—1937 A. L. J. 46—1936 R. D. 543. (L. P. A. from the decision in 1935 A. I. R. All. 562.)

<sup>6</sup> 39 All. 254—15 A. L. J. 227—38 I. C. 825.

relating to an agricultural holding, and does not come within the section because the defendant sets up a theka to justify his possession. He also differed from Mr. Justice Piggott as to the case where a theka comprises land and objects which are not land.<sup>1</sup>

9. **The civil court shall decide.**—The decree is of the Civil Court, though it must be according to the decision of the Revenue Court on the question of tenancy.

The only question referred to under section 288 is of tenancy and not of the class of tenancy and if the Revenue Court finds that the defendant in the civil suit is a tenant, the Civil Court must dismiss the suit.<sup>2</sup>

See note 4 *ante*.

10. **Whether Civil Court can give a declaration as to tenancy**—[In *Raja Ram v. Moti Begam*,<sup>3</sup> a single Judge gave a declaration that the defendant held as a tenant, in a case where the plaintiff admitted the tenancy but denied the proprietary title which the defendant asserted. So in *Ali Jafar v. Phulwanta*.<sup>4</sup> In both these cases the relief claimed was ejectment of the defendant as trespasser on account of denial of plaintiff's title while the defendant was a tenant, or in the alternative, a declaration that the defendant held only as tenant and not as proprietor.

Where the defendant does not want the class of his tenancy determined, the Revenue Court may still decide his claim to be a tenant.<sup>5</sup>

11. An order returning a plaint is appealable.<sup>6</sup>

12. **Sub-section (4).**—There is no appeal from the Revenue Court's finding to Revenue Court, or to a Civil Court from such finding or from an order reversing such finding on review.<sup>7</sup> But on an appeal from the Civil Court decree, that finding may be challenged.

<sup>1</sup> See also *Nisar Husain v. Sundarlal*, 25 A. L. J. 1025—VIII U. D. (H. C.) 242—104 I. C. 292—8 L. R. Rev. 264—1927 R. C. 300—11 R. D. 339.

<sup>2</sup> *Khaderu v. Sri Nath*, XII U. D. (H. C.) 65—12 L. R. Rev. 35—129 I. C. 553—15 R. D. 162.

<sup>3</sup> II U. D. 755.

<sup>4</sup> 13 A. L. J. 843—30 I. C. 546.

<sup>5</sup> *Kalicharan v. Sital*, 1 U. P. L. R. (B. R.) 32—53 I. C. 82—III U. D. 293—4 R. D. 115.

<sup>6</sup> *Raghunath v. Ganesh*, 18 A. L. J. 214—42 A. 222—6 Rev. and Cr. L. J. 76—IV U. D. 760—54 I. C. 381—1 L. R. Rev. 38—2 U. P. L. R. 79—6 R. D. 351.

<sup>7</sup> *Jokhai v. Jawahar Lal*, 1937 All 521—1937 A. I. R. All. 500—1937 A. L. J. 699—XVIII U. D. (H. C.) 99—1937 R. D. 271.

13 Rules framed by the Provincial Government to give effect to the provisions of this section are given below<sup>1</sup>:—

21. On receipt of a record under the provisions of section 288 of the Act for the decision of the issue on the question of tenancy, the Collector shall forthwith forward the record to the appropriate revenue court for the decision of that issue.

22. On receipt of the record the *Ahlmad* shall immediately make an entry thereof in the register of references maintained under rule 23 and shall endorse on the reference the serial number of the said register. When the record is sent back to the civil court together with the finding of the revenue court, the date of the return of the record shall be similarly entered in the remarks column of the register.

23. For references received under the provisions of section 288 of the Act, a register of references shall be maintained in the court of each assistant collector of the first class in the following form :

Serial number of reference.	Serial number of case on the file of civil court.	Name of civil court making reference.	Pargana and mauza.	Name of parties.	Nature of case with reference to section of law.	Date of receipt of record with reference.	Date of return of record with finding.	Remarks.
1	2	3	4	5	6	7	8	9

24. (a) The papers added to the record of the civil court, while it is in the revenue court, shall not be classified and put in *nathi* A or B, but shall be kept in a single file called "the reference file." A serial number shall, however, be endorsed on each paper, as it is entered in the fly index and brought on the reference file.

<sup>1</sup> These rules were published in the United Provinces Gazette dated 13th April, 1940.

(b) The reference file shall be added to the civil court record as soon as the revenue court has recorded its finding and the record so prepared with the finding shall be returned direct to the civil court from which it was originally received.

25. References received from the civil courts shall be shown separately in the monthly progress report of cases submitted by revenue courts to Collector and also in the business statement submitted under instruction No. 19, relating to general conduct of business, Revenue Court Manual, Part I, Chapter I.

### *Conflict of jurisdiction.*

289. Where either a civil or revenue court is in doubt whether it is competent to entertain any suit, application or appeal, or whether it should direct the plaintiff, applicant or appellant to file the same in a court of the other description, the court may submit the record with a statement of the reasons for its doubt to the High Court or the Chief Court, as the case may be.

(2) Where any suit, application or appeal, having been rejected either by a civil court or by a revenue court on the ground of want of jurisdiction is subsequently filed in a court of the other description, the latter court, if it disagrees with the finding of the former, shall submit the record with a statement of the reasons for its disagreement to the High Court or the Chief Court, as the case may be.

(3) In cases falling under sub-section (1) or sub-section (2) if the court is a revenue court subordinate to the collector, no reference shall be made under the foregoing provisions of this section except with the previous sanction of the collector.

(4) On any such reference being made, the High Court, or the Chief Court, as the case may be, may order the court either to proceed with the case, or to return the plaint, application or appeal for presentation to such other court as it may declare to be competent to try the same.

(5) The order of the High Court or the Chief Court, as the case may be, shall be final and binding on all courts subordinate to it or to the Board.

1. This corresponds to section 267 of the Agra Act of 1926 and to section 124A of the Oudh Act.

Section 267 of the Act of 1926 corresponded to section 195 of Act II of 1901, Cf. Order 46, rr. 6, 7 C. P. C.



2. The reference should be made under this section, and not under Order 46 of the Civil Procedure Code.<sup>1</sup> A reference is permissible only when the Court entertains a doubt about jurisdiction and gives expression to it in its order, otherwise the High Court will refuse to interfere, although the Lower Court may have acted on the application of one of the parties.<sup>2</sup> Where the doubt is not as to the forum in which a suit, application or appeal lies, but as to whether a suit, application or appeal lies at all, this section is inapplicable.<sup>3</sup>

3. Sub-section (1) refers to a case where a court entertains a doubt, which may be due to conflicting decisions,<sup>4</sup> as to its own competency. The Court has discretion to make a reference or to decide the matter itself by deciding the question of competency and either entertaining the suit, etc., or returning the plaint, etc. for presentation to the proper court. If it refers, it must state the reasons for its doubt.

4. Sub-section (2) refers to a case where a court of one description has decided against its own competency and *rejected* a suit, etc. The word *reject* is unfortunate. It would not, it is submitted, include a case where a plaint, etc., is returned for presentation to the proper court. The section is applicable only when on such rejection, the litigant has filed it in a court of the other description, and the latter disagrees with the view of the court of the first description. In such a case, the Court of the other description must make a reference to the High Court, giving reasons for its disagreement. The sub-section is imperative and a reference must be made with a statement of the reasons for disagreement.<sup>5</sup> The court cannot dismiss the suit without making the reference.<sup>6</sup>

5. Sub-section (3) requires that sanction of the Collector should be obtained by a subordinate revenue court before making a reference.

## 290. When in a suit instituted in a civil or revenue court,

Plea in appeal that an appeal lies to the district judge or to suit was instituted in the High Court or the Chief Court, as the wrong court.

case may be, an objection that the suit was instituted in the wrong court shall not be entertained by the appellate court unless such objection was taken in the court of first instance; and the appellate court shall dispose of the appeal as if the suit had been instituted in the right court

<sup>1</sup> *Madho Prakash v. Bhondal Lal*, 1 A. W. N. 145.

<sup>2</sup> *Ruorani v. Chanderbhan*, 3 A. W. N. 136; *Sri Narain Singh v. Ram Kumar Singh*, 14 I. C. 123.

<sup>3</sup> *Janor v. Minsoor Khan*, 1 A. L. J. 37; *Radha Mohan v. Radha Prasad*, 1 Leg. Rem 58 (H. C.)

<sup>4</sup> *Qudsia Jan v. Zahid Husain*, 57 All. 854=1935 A. I. R. All. 545=1935 A. L. J. 482=XVI U. D. 200=1935 R. D. 159.

<sup>5</sup> *Ahsan Ali v. Gori Lal*, 1937 R. D. 244=XVIII U. D. 175.

<sup>6</sup> *Ibrahim v. Bharat Singh*, XVI U. D. 22=1935 R. D. 23.

**291.** (1) If in any suit such objection was taken in the court of first instance, and the appellate court has before it all the material necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right court.

(2) If the appellate court has not before it all such materials, and remands the case, or frames issues and refers them for trial, or requires additional evidence to be taken, it may direct its order to the court in which the suit was instituted, or to such court as it may declare to be competent to try the same.

(3) No objection shall be taken or raised in appeal or otherwise to any such order on the ground that it has been directed to a court not competent to try the suit.

1. Sections 290, 291 reproduce in effect sections 268 and 269 of the Agra Act of 1926 which reproduced sections 196 and 197 of the Act of 1901 and corresponded to sections 207, 208 of the Rent Acts. They correspond to sections 124 B, 124 C and 124 D of the Oudh Act.

2. **Suit instituted in a Civil or Revenue Court, etc.**—The word *suit* seems to limit the application of these sections to suits contemplated by this Act. *i. e.*, to suits which are within the purview of this Act. Suits which are wholly outside the scope of this Act are not amenable to the treatment of these sections. For instance, a suit for compensation for use and occupation of land, so far as it is not provided for by section 180 is wholly outside the Act. Section 180 only applies to occupation or retention of occupation of agricultural land without consent and if the status of the occupier was recognised as that of a tenant, *e. g.*, by the owner ejecting him as a tenant, no suit for use and occupation lay under section 34 of the Act of 1901 or section 44 of the Act of 1926 or lies under section 180 of this Act. Hence, a suit for compensation for such use and occupation prior to the ejectment of the occupant was not within the purview of Act II of 1901, and sections 196, 197 of that Act (corresponding to present sections 290, 291) could not be applied to it.<sup>1</sup>

Again a claim for possession and mesne profits by a co-sharer in a village against another co-sharer or the lambardar who is alleged to have wrongfully dispossessed the plaintiff is outside the scope of the Tenancy Act, and hence if the claim for mesne profits is dismissed by the Civil Court on the ground of want of jurisdiction, these sections can not be applied to it on appeal, so as to justify the appellate court in passing a decree for profits under section 231 of the Act.<sup>2</sup> But if

<sup>1</sup> *Chiddu Singh v. Rup Ram*, 10 I C 244.

<sup>2</sup> *Aminullah v. Hajira*, 3 A. L. J. 767=26 A. W. N. 222; see also *Sheo Baran Singh v. Bhagwan Sahai*, 17 A. L. J. 313; *Dhyan v. Thakur Rai*, 15 All 25=12 A. W. N. 138. See *Sri Krishna Lal v. Ghulam Subhan*, 17 O. C. 55=1 O. L. J. 157=23 I. C. 460.

the suit in the Civil Court had been for mesne profits only, these sections would have been held applicable.<sup>1</sup>

If this view is correct, and bearing in mind that all suits mentioned in Schedule IV must be brought in some revenue court or other, the sections must be limited in their application to cases where a Revenue Court suit is brought in and entertained by a Civil Court under an impression that it has jurisdiction and an appeal is taken, as it must be taken, to a superior Civil Court. Even this appears to be too wide, for section 290 also speaks of suits wrongly filed in a Revenue Court in which an appeal lies to the Civil Courts. Hence, the further limitation seems to be that if the suit, wrongly brought in a Civil Court, had been brought in a Revenue Court, an appeal would have lain to a superior Civil Court. This narrows down the section in the first instance to suits mentioned in section 265 (1) (a) and specified in detail in Group A of the fourth schedule. One argument against this is that if the legislature intended to put this narrow limit it would have plainly said so instead of using the general words at the commencement of section 290.

Section 265 (1) (b), (c), (d) and section 265 (3) provide for other cases of appeals to the Civil Courts; but these cases do not depend upon the plea alone; they may arise on the plea of the defendant. Either section 290 or 291 is not applicable to any of these cases, or is applicable to every one of them, for no ground of distinction exists.

In *Jagar Nath Singh v. Damodar Singh*,<sup>2</sup> the reversioner of a Hindu fixed-rate tenant brought a suit against their landholder under section 79 of Act II of 1901 (present s. 183) in a Revenue Court after the death of his widow. The defendants claimed title to the fixed-rate holding in dispute under a sale from the widow. It was held that since the defendants obtained possession under a sale from the widow, the reversioner could not be said to have been dispossessed and hence section 79 did not apply. The District Judge on appeal, however, purported to act under section 197 of the Act of 1901 (present s. 291). It was held that since a plea of jurisdiction was raised, an appeal lay to him and he could act under section 197. The reasoning, if not the decision, requires reconsideration.

At one time it was assumed rather than decided that these sections were very liberal; but now some doubts have been cast on this view.

**3. Civil suit in Revenue Court.**—In this connection it must be remembered that section 242 limits the scope of suits that may be instituted in Revenue Courts to (i) suits mentioned in or of the nature of suits mentioned in Schedule IV, and (ii) in which, on the cause of action alleged, the Revenue Court can grant relief, although the relief asked for from the Civil Court may not be identical with that

<sup>1</sup> *Saidunissa v. Fida Husain*, 19 A. L. J. 194=1921 A. I. R. All. 112=IV U. D. 713=7 R. and Cr. L. J. 86=2 L. R. Rev. 57=1922 R. C. 600=61 I. C. 385=6 R. D. 208.

<sup>2</sup> 1931 A. L. J. 603=1932 A. I. R. All. 37=133 I. C. 473=16 R. D. 106.

which the Revenue Court can grant. Where a suit ostensibly of a civil nature is brought in a Revenue Court, it has to satisfy itself of the existence of these two conditions. If either or both do not exist, the plaint should be returned for presentation to the proper court. Should, however, the Revenue Court entertain it sections 290, 291 would come into play only when an appeal from the Revenue Court decision lies to the Civil Court. If not, section 276 would not give a right of revision to the High Court, but under section 275 the Board of Revenue may revise it. What is the test of an appeal to the Civil Court from the Revenue Court in such a case? The allegations alone in the plaint, as held in Revenue Court suits wrongly brought in Civil Courts (*vide* next note); or those allegations *plus* the objection as to jurisdiction, etc., which make appeals lie to Civil Courts under clauses (b), (c), (d) of subsection (1) and subsection (3) of section 265. It is submitted that in such cases the allegations in the plaint do not constitute the sole test but that the objections in the defence should also be considered in determining whether a Revenue Court decision is appealable to the Civil Court, as held in the decisions cited below.

Where a Civil Court suit is brought in a Revenue Court, an appeal from the decision, if the suit had been instituted in the Civil Court, would have lain to the Civil Court, and, hence, it may be said that as an appeal in the suit would have lain or lies in a Civil Court, in whatever class of *fori* the suit was or is brought, the Civil Court of appeal can act under these sections and the question of jurisdiction is immaterial. But this overlooks the fact that the decision of the Revenue Court however wrong or *ultra vires* may not be appealable to the Civil Courts at all. In the cases noted in the footnote, the suits were brought in some Revenue Court or other, and the Civil Court of appeal was held bound to give the benefit of these sections or of the corresponding sections of Act XII of 1881 to the litigant.<sup>1</sup> In other words, the Court of appeal should not in such a case dismiss the suit on its arriving at the conclusion that the suit was wrongly instituted in the Revenue Court, whether in affirmance of the decision of the first Court,<sup>2</sup> or in reversal of such decision,<sup>3</sup> and more so, if the objection was not raised in the first Court.<sup>4</sup>

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<sup>1</sup> *Kaniz Rasul v. Ashraf-un-nissa*, 22 A. W. N. 156; *Bansidhar v. Behari*, 8 A. W. N. 74; *Debi Saran v. Debi Saran*, 6 All. 378=4 A. W. N. 122; *Madho Lal v. Sheo Prasad*, 12 All. 419=10 A. W. N. 162; *Lachmi Narain v. Bhawani Din*, 4 All. 379; *Budri Nath v. Bhajan*, 5 All. 191, *Sheo Prasad v. Anrudh Singh*, 6 All. 440=4 A. W. N. 144; *Manohari v. Bhura*, 29 I. C. 565; *Girwar v. Sita Ram*, 11 All. 31=8 A. W. N. 282; *Lal Man v. Din Dayal*, 8 Rev. and Cr. L. J. 138=V U. D. (H. C.) 29=3 L. R. Rev. 149=8 R. D. 571.

<sup>2</sup> *Debi Saran v. Debi Saran*, 6 All. 378; *Bharat Indu v. Khetsidas*, 9 I. C. 848; *Ahmaduddin Khan v. Majlis Rai*, 5 All. 438; *Brijbhawan v. Mandi*, 7 A. W. N. 140.

<sup>3</sup> *Bansidhar v. Behari*, 8 A. W. N. 74; *Lachmi Narain v. Bhawani Din*, 4 All. 379; *Gangu Sahai v. Rai Kumar*, 1 I. C. 902; *Manohari v. Bhura*, 29 I. C. 565; *Ranjit Singh v. Dwan Singh*, 9 A. W. N. 175.

<sup>4</sup> *Madho Lal v. Sheo Prasad*, 10 A. W. N. 162=12 All. 419.

It was held to be right in ignoring the question of jurisdiction.<sup>1</sup>

If there were sufficient materials on the record, the appellate Court was not justified in remanding the case but should have decided the case itself.<sup>2</sup>

4. It was held that there is a distinction between *muafi* and *guzara*. When the relationship of landlord and tenant does not exist between the parties there may be *guzara* but where such relation does exist between the parties, there is a *muafi*. The provisions of chapter IX apply to a suit for possession of land held as rent-free *muafi*, and not by way of *guzara* and Civil Courts have no jurisdiction to entertain such suits.<sup>3</sup>

5. **Revenue suit in Civil Court.**—Where a Revenue Court suit is wrongly brought in a Civil Court, the question has arisen whether a Civil Court of appeal to which an appeal, if any, from a Civil Court decision must be taken, is bound to act under these sections on its coming to a decision that the suit had been wrongly brought in the Civil Court. In Oudh, it was held that it was not bound to act under the sections.<sup>4</sup>

The matter came before a Bench of three Judges.<sup>5</sup> There, the allegations in the plaint, said to be the sole test of jurisdiction under section 242, in a suit for possession against an alleged trespasser, showed that the defendants claimed title to the land (agricultural) in dispute through the landholder, the suit thus falling under section 183. The suit was however filed in the Munsif's Court which returned the plaint for presentation to the proper Court. On appeal from this order, the District Judge quashed the order and remanded the case to the Munsif for disposal. On the matter being brought up to the High Court in revision, it was held that since the Munsif had no jurisdiction, the suit being cognizable by a Revenue Court, no appeal lay to the District Judge whose order was therefore without jurisdiction, and section 291 did not apply.

This means that if a District Judge entertains an appeal which does not legally lie in his Court, he cannot act under sections 290, 291 and that these sections are inapplicable where the Civil Court had on the allegations in the plaint no jurisdiction to entertain the suit unless an appeal from the decision of the Revenue Court in which it should have been brought lies to the Civil Court.

<sup>1</sup> *Badri Nath v. Bhajan Lal*, 5 All. 191; *Girwar Singh v. Sita Ram*, 11 All. 31; *Rai Kishen v. Har Sarup*, 3 A. W. N. 20, are bad law now.

<sup>2</sup> *Majid-un-nissa v. Muhammad Hamid Ali Khan*, 2 A. L. J. 118; see *Ahmad-uddin Khan v. Majlis Rai*, 5 All. 438=3 A. W. N. 69.

<sup>3</sup> *Bhagwan Singh v. Bisheshar Nath*, 20 O. C. 37, relying on *Saifuroni v. Najaf Ali*, 11 U. D. 219=3 R. D. 121.

<sup>4</sup> *Lal Jung Bahadur Singh v. Bisheshar Baksh Singh*, 4 O. C. 314.

<sup>5</sup> *Ram Iqbal Rai v. Telesari*, 53 All. 75=1930 A. I. R. All. 713=1930 A. L. J. 1233=XII U. D. (H C) 28=11 L. R. Rev. 349=127 I. C. 434=14 R. D. 612, relied on in *Kashi v. Asharfi Singh*, 1938 All. 754=1938 A. L. J. 720=1938 R. D. 714.

It was also held that section 290 applies only to cases in which, if rightly instituted in a Civil or Revenue Court, an appeal lies to the District Judge according to law, and cannot, consistently with the provisions of the Act, such as sections 242, 265, apply to suits wrongly instituted in a Civil Court in which, if rightly instituted in a Revenue Court, an appeal would have lain to the Revenue Courts.

This means that in the case of a plaint filed in a Civil Court, the appellate Court should examine the allegations therein to see if it could have been filed in a Revenue Court, and, if it could have been, whether under section 265 or 271, an appeal from the decision would lie to the Revenue or the Civil Courts. If the latter, the appellate Court may act under sections 290, 291. If the former it cannot.

The Judges differed as to whether there was any distinction between groveland and grove, and held that a suit for a declaration that plaintiff is the absolute owner of certain trees in a grove and for an injunction in respect of his right to appropriate the produce of the trees, is not cognizable by the Civil Court as Revenue Court can grant relief and also that section 290 does not apply if it is not clear that if the suit had been filed in a Revenue Court, an appeal would have been to the District Judge.<sup>1</sup> This is extending to some extent the rule laid down in the three judge case.

In *Bahadur v. Prabhu Narain Singh*,<sup>2</sup> the landlord sued a groveholder in a Civil Court for ejectment for breach of condition by conversion into a building site. The trial Court held that over half the land still retained its character as grove and dismissed the suit. The District Judge on the finding that the grove had lost its character by fact of the building decreed it. On appeal to the High Court, jurisdiction was first pleaded as the suit was one which came within section 172. It was held that the District Judge was empowered to act under section 291 inasmuch as the value of the suit being over Rs. 200, an appeal, even if the suit had been instituted in the Revenue Court, would have lain to him.

In *Jagan Nath v. Balwant Singh*,<sup>3</sup> a suit was brought in a Civil Court by a zamindar for a declaration that A was not the adopted son of B, and that A's son C was not the grandson of B. B had been an occupancy tenant, and the plaint alleged that fact, and also that A had not been adopted by B, and that C was not the grandson of B, that C was therefore not an occupancy tenant as he claimed to be in proceedings under section 39, Land Revenue Act, but a mere non-occupancy tenant. On these allegations, the real dispute was to the class of C's tenancy,

<sup>1</sup> *Bakridi Mian v. Bhagwan Din*, 57 All. 922=1935 A. L. J. 520=1935 A. I. R. All. 608=1935 R. D. 220=XVI U. D. 285.

<sup>2</sup> 1931 A. L. J. 408=53 All. 636=1931 A. I. R. All. 553=XII U. D. 104=15 R. D. 435=12 L. R. Rev. 290.

<sup>3</sup> 44 All. 692=20 A. L. J. 570=1922 A. I. R. All. 372=1922 R. C. 301=V U. D. (H. C.) 57=3 L. R. Rev. 235=8 R. and Cr. L. J. 263=4 U. P. L. R. 194=68 I. C. 247=7 R. D. 170.

and the suit lay in a Revenue Court without a right of appeal to the District Judge.

Under the present Act the explanation to section 242 would prevent the Civil Court from entertaining the suit and granting the relief claimed although it was masked as one for declaration only. Under Act II of 1901, the Civil Court jurisdiction was not barred but it could refuse to exercise its discretion of granting a declaratory decree.<sup>1</sup>

The original Civil Court held it had jurisdiction and on the merits decreed the suit. The District Judge held that the Civil Court had no jurisdiction and without going into the merits dismissed the suit, which was quite wrong. He should have either acted under these sections or at the most returned the plaint for presentation to the proper Court. On second appeal, this was reversed and the case directed to be sent back for trial on the merits. In Letters Patent Appeal, a Bench of two Judges ruled that since the suit did not lie in the Civil Court at all, the District Judge could not entertain the appeal and act under these sections, and upheld the decision of the District Judge dismissing the suit. The decision in effect was that the suit in the Civil Court was misconceived and must be dismissed.

In *Bechu v. Nand Ram*,<sup>2</sup> a suit for ejectment of a person who had admittedly been the plaintiff's tenant but who was said to have become a trespasser by denying the tenancy was filed in a Civil Court. The trial Court finding that a contract of tenancy was proved dismissed the suit on the ground that on the allegations in the plaint he had no jurisdiction as the suit should have been filed in a Revenue Court. On appeal the District Judge was asked to act under sections 196, 197 of Act II of 1901 (now ss. 290, 291.) While considering that the sections did not apply, he took up the case as if they did, and dismissed the appeal as from a Revenue Court decree on the ground that no appeal lay to him. On appeal to the High Court, a single Judge held that those sections only applied to suits in which an appeal lay in any event to the Civil Courts, whether they are instituted, in the first instance, in the Civil or the Revenue Court.

In *Ram Charan v. Sheoraj*,<sup>3</sup> a person admitting himself to have been a tenant of a holding sued the zamindar and a co-tenant for restoration of possession on the ground that he had been illegally ejected under a decree which did not bind him. There can be no question that he should have sued in the Revenue Court under section 79 of Act II of 1901 (present s. 183). The two Courts in the district dismissed the suit on the ground that the suit should have been filed in the Revenue Court. On second appeal, a single Judge upheld this decision on the ground that section 196 of the Act (present s. 290) only applied to a case which had been instituted in the wrong Court, but on appeal had come before the Court to which

<sup>1</sup> See *Birham Khushal v. Sumera*, 35 All. 299, and other cases cited under sections 59, 60, and 272.

<sup>2</sup> 12 A. L. J. 902.

<sup>3</sup> 28 All. 464—3 A. L. J. 226—26 A. W. N. 91.

an appeal would have lain if the suit were rightly instituted in the prescribed Court.

A suit for the objectment of a person admitted to a tenancy even under a lease given by a person alleged not to possess the necessary authority lies in a Revenue Court, and if brought in a Civil Court, section 290 cannot be applied.<sup>1</sup>

It will be noticed that in all these cases, the High Court Judges have proceeded on the view that the Civil Court should have been the forum of appeal if the case had been brought in the right Court and the fact that the Civil Court is the only forum of appeal for the suit as brought is immaterial.

*Badam Singh v. Sabta Kuar*,<sup>2</sup> takes the opposite view and holds that so long as the decision of the Court in which a suit has been instituted, whether made rightly or wrongly, is a decision from which an appeal lies to the District Judge, sections 196, 197 of the Act of 1901 applied. This case was doubted in *Bechu Ram v. Nand Ram*<sup>3</sup> and dissented from in *Ram Iqbal v. Telesari Kuari*<sup>4</sup>. This seems also to have been the *ratio decidendi* in *Ram Narain Singh v. Rampat*,<sup>5</sup> where a suit which should have been brought under section 79 of Act II of 1901 in a Revenue Court was brought in a Civil Court, and was dismissed by the two Courts in the district for want of jurisdiction, and the same learned Judge who subsequently decided 12 A. L. J. 902 was of opinion that the District Judge could have acted under section 197, and remitted an issue to ascertain whether, regarded as a Revenue Court suit under section 79, it was within limitation.

Other decisions which take the latter view are:—*Chaturbhuj v. Mangal Singh*,<sup>6</sup> decided by the same Judge as *Ram Charan v. Sheo Raj*<sup>7</sup>, who however doubted whether section 167 of Act II of 1901 (now s. 242) barred the civil suit, and applied section 196 of that Act; *Naubat Singh v. Baldeo Singh*,<sup>8</sup> a two Judge decision which applied the said section 196 on the ground that in the civil suit a plea of jurisdiction was taken, and therefore even if the suit had been instituted in the revenue court such plea would have made the decision appealable to the District Judge; *Bartana Kuar v. Ram Lagan*,<sup>9</sup> a single Judge decision; *Jaimal Singh v. Ouseley*,<sup>10</sup> a Bench decision; *Bholai Khan v. Abu Jafar*,<sup>11</sup> a bench decision, holding that section 196 applied even though the suit was dismissed on

<sup>1</sup> *Sundar Lal v. Kifayat Husain*, V U. D. (H. C.) 22—1922 R. C. 14—8 R. and Cr. L. J. 126—3 L. R. Rev. 134—8 R. D. 529.

<sup>2</sup> 2 A. L. J. 119 (2 judges).

<sup>3</sup> 12 A. L. J. 902 (cited on the last page).

<sup>4</sup> 1930 A. I. R. All. 713 (F. B.)—1930 A. L. J. 1233—14 R. D. 612.

<sup>5</sup> 10 A. L. J. 178.

<sup>6</sup> 9 I. C. 1005.

<sup>7</sup> 28 All. 464—3 A. L. J. 226 (cited above).

<sup>8</sup> 9 I. C. 666.

<sup>9</sup> 11 U. D. 718.

<sup>10</sup> 11 U. D. 750.

<sup>11</sup> 21 All. 267—19 A. W. N. 55.



a preliminary point without a trial on the merits; *Jami v. Baldeo*,<sup>1</sup> a bench decision.

*Sanwal v. Murli*,<sup>2</sup> indicates a limitation to the application of section 291 on any view of the matter. There a lease for seven years provided that if the lessee failed to deliver possession at the end of the term, he would be liable to pay rent at double the rate mentioned in the lease, i. e., Rs 400 instead of Rs. 200. The lessee did not vacate the land, and the lessor sued him for ejectment under section 58 (b) of the Act of 1901. The lessee pleaded the benefit of section 67 of that Act. The Revenue Court held that an increase of Rs. 5 could be equitably awarded and decreed accordingly. The lessor then sued in a Revenue Court for rent at the rate of Rs. 400. The plaint was returned for presentation to the Civil Court, which also refused to entertain it, but on appeal the High Court directed the District Judge to proceed under section 197 of that Act. That officer then held that the suit was for arrears of rent and had been in the first instance rightly instituted in the Revenue Court, and that, that being so, the suit, though subsequently brought in a Civil Court, was a Revenue Court suit, as to which the previous decision of the Revenue Court operated as *res judicata*. On appeal to the High Court, the point principally urged was that the suit was for damages for breach of the covenant to deliver up possession, and that the parties having assessed the damages in the lease itself, the claim should have been decreed. Piggot, J. upheld the decision of the District Judge as to *res judicata* and also ruled that the covenant if enforced would contravene the provision of section 67 of the Act of 1901.

Hence, it seems that even if section 291 applied to a suit improperly brought in a Civil Court, the case has to be decided as a Revenue Court suit under the provisions of the Tenancy Act and subject to all the limitations and restrictions contained therein.

On a consideration of the recent decisions the following positions are clear :—

- (i) Sections 290, 291 apply where a suit is, according to the plaint allegations, in Group A of the Fourth Schedule and triable by an Assistant Collector of the first class and exceeds Rs. 50 in value, or the liability to pay rent or the amount of rent annually payable or the amount of rent payable separately to one or more of a number of co-sharers, or in a suit under Chapter XII liability to pay revenue or the amount of the revenue annually payable has been in issue in the first court, and the decision of that court on that point is challenged in an appeal from the decree of that court.
- (ii) These sections do not apply if the allegations in the plaint show the suit to be one of those contemplated by Schedule IV, and it has been brought in a Civil Court.

<sup>1</sup> 11 A. W. N. 191.

<sup>2</sup> 10 A. T. T. 52—15 T. C. 220

The application of the sections to suits, the decisions in which become appealable to the Civil Court only because a question of jurisdiction has been decided and is an issue in the appeal as completed by section 265 (3) is not clear. Under the literal interpretation of the earlier rulings, there was no hesitation about the application of the sections. But now there is ; in fact one may not be wrong in saying that the sections do not apply to such cases. The recent rulings render the sections almost useless.

One of the primary rules of interpretation of statutes is to take the words in their etymological or dictionary or definition sense and not to add to or subtract from the words used, unless the section as it stands is meaningless or is absurd. There is nothing in the words of sections 290, 291 to make them meaningless or absurd. Hence no words should be added to them. All the rulings from 12 A. L. J. 902 onwards add such words as "rightly or properly" between "suit" and "instituted" in section 290, or "on the allegations in the plaint" after "when" in the same section.

The latter addition might have been deemed to be justified if a conflict of jurisdiction between Civil and Revenue Courts was involved in the sections. But their plain object is to ignore the question of jurisdiction altogether and to proceed with the determination of the appeal as if no such question existed.

Let us consider the case adumbrated in section 265 (3) which makes a Civil Court the court of appeal in suits under the Act because of a defence as to jurisdiction. Section 265 (3) shows that the question of jurisdiction should have been decided and should be in issue in the appeal. The application of sections 290, 291 will in such an event arise because the trial court has *decided* a question of jurisdiction, and if the literal meaning is to be given to the words "suit instituted in a civil or revenue court" the Civil Court of appeal, if it disagrees with the decision of the first court on the point, will ignore the issue and proceed to decide the rest of the case itself on the materials on the record or on that and extra material on new issues or additional evidence. It will not return the plaint for presentation to the proper court, or dismiss the suit. The objection to jurisdiction, if any, of the first court is thus removed.

The only case in which the application of sections 290, 291 may arise is where the objection is that the suit as framed did not lie in the Civil or Revenue Court in which it was brought but should have been brought in the Revenue or Civil Court. That will raise a question of jurisdiction, and the remarks made above apply.

6. **An appeal lies, etc.**—No appeal lies in a Small Cause Court suit and in such a case these sections cannot be applied. As shown above this expression means an appeal lies properly and according to law, and not simply because it has been filed in and decided by a Civil Court.

An appeal in a suit under section 226 lies in a Civil Court, irrespective of whether it was tried by a Civil or Revenue Court.<sup>1</sup>

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<sup>1</sup> *Uma Bala v. Ram Sahai*. 4 O. C. 251.

A suit for removal of certain constructions by the defendant tenant which are contended to be but are not improvements, is one for a Revenue Court, so a suit challenging a transfer, and no appeals lie in such suits to the District Judge and hence section 290 does not apply, *Kashi v. Asharji Singh*.<sup>1</sup>

A suit for an injunction under section 174 also lies in a Revenue Court, but an appeal lies to the Civil Court (Group A, item No. 8 of the Fourth Schedule). In the above mentioned case the learned judges opined that no appeal lay to the Civil Court.

A difficulty arises in connection with cases in Group A of the Fourth Schedule where the value is less than Rs. 50. An appeal lies to the Collector and a second appeal may on certain pleas lie to the District Judge. Would such a case be considered to be one in which an appeal lies to the District Judge, if the suit had been instituted in the Revenue Court?

The expression *an appeal lies* does not say whether the appeal meant is from a decree or from an order passed in the suit. Where a revenue suit is wrongly brought in a Civil Court, there are many appealable orders [mentioned in clauses (a) to (h) and clauses (k), (l), (m), (n), (o), (p), (q), (r), (s) and (w) of Order 43, rule 1 of the Code of Civil Procedure] which may be passed by the court of first instance in the course of the trial of a suit before it. Can a District Judge when hearing an appeal from one of such orders avail himself of the provisions of section 291? *Naubat Singh v. Baldeo Singh*,<sup>2</sup> is the only reported case in which the plaint being returned for presentation to the proper court, and an appeal being filed before the District Judge, the High Court held that the judge could have proceeded under section 291. The point that sections 290 and 291 apply only to appeals from decrees was not argued or decided. The point arose directly in *Bisheshwar Prasad v. Raghubir*,<sup>3</sup> where it was held that the section applied only when the decision appealed from was on the merits, and not where the appeal was from an interlocutory order passed by a court, *e. g.*, returning a plaint, without deciding on the merits.

But where the trial court on the decision of a preliminary point, such as jurisdiction,<sup>4</sup> dismisses a suit it passes a decree, and hence sections 290, 291 would apply.

It may be taken as true that sections 290 and 291 did not apply to appeals from appellate decrees or orders, *i. e.*, the High Court cannot, in a second appeal from an appellate decree, or in a first appeal from an appealable order, of a District Judge, avail itself of the provisions of section 291 should a question of jurisdiction be raised before it for the first

<sup>1</sup> 1938 All. 754=1938 A. L. J. 720=1938 A. I. R. All. 511=1938 R. D. 714.

<sup>2</sup> 9 I. C. 666.

<sup>3</sup> 18 All. 168=24 A. L. J. 83=VII U. D. (H. C.) 1=6 L. R. Rev. 255=12 Rev. and Cr. L. J. 22=90 I. C. 353=1925 R. C. 520=9 R. D. 215.

<sup>4</sup> *Ram Sundar v. Ram Khelawan*, 1926 A. I. R. All. 708=VII U. D. (H. C.) 233=7 L. R. Rev. 410=1926 R. C. 499=96 I. C. 789=10 R. D. 85; *Bholai Khan v.*

time. That court will simply ignore it, or in a proper case return the plaint for presentation to the proper court; whereas if it was raised for the first time before the District Judge and he gave effect to the plea, by dismissing the suit or returning the plaint for presentation to the proper Court, the High Court will direct him to proceed under the provisions of sections 290, 291, and so if it was raised in the first court and repeated before the District Judge and the High Court.

7. **Unless such objection was taken.**—An objection as to jurisdiction need not relate to the whole of the suit.<sup>1</sup>

In suits in which no appeal lies and in applications the ordinary law holds good, and an order of remand may be appealed from or objected to.<sup>2</sup>

8. **Shall dispose of.**—The District Judge is not authorised by this section to convert a suit of one description into a suit of a totally different description, *e. g.*, a suit for arrears of rent into a suit for damages for breach of covenant contained in a lease<sup>3</sup> or a suit for mesne profits into a suit for profits.<sup>4</sup> He cannot try a suit for contribution as a suit for settlement of accounts.<sup>5</sup> In a proper case, the plaint may be returned for presentation to the proper Court.<sup>6</sup> In an Oudh case, it was held that where the trial court had given no findings on facts or decided the case it was impossible for the appellate court to decide the case on the merits, and that if in such circumstances the appellate court simply affirmed the trial court's decision there was no failure on its part to exercise jurisdiction.<sup>7</sup>

In appeal the district judge, instead of ordering the plaint to be returned to the plaintiff, should remand the suit, if there are no materials on the record necessary for determination of the suit.<sup>8</sup>

9. **The appeal.**—The District Judge is directed to dispose of the appeal. Where the appeal is from a decree, the direction means that he is to dispose of the suit on the merits. If the appeal is from an appealable order, *e. g.*, one returning the plaint in a suit for presentation to the proper Court, a literal interpretation of the expression "the appeal" would entitle him to confirm or reverse that order without going into the merits of the case. It is questionable whether a literal

<sup>1</sup> *Lachmi Narain v. Bhawan Din*, 4 All. 379=2 A. W. N. 87; *Badri Nath v. Bhajan Lal*, 2 A. W. N. 216. If no objection was taken, the Court must ignore it, *Budhu v. Badlu*, 11 L. R. Rev. 20=XI U. D. (H. C.) 63=118 I. C. 523=14 R. D. 68, *Contra*, *Baleshar Pandey v. Ram Tahal*, 1930 A. I. R. All. 519=11 L. R. Rev. 183=XI U. D. (H. C.) 236=14 R. D. 409.

<sup>2</sup> *Kishun Kuar v. Bagrun Das*, 1 O. C. 172.

<sup>3</sup> *Sanwal Kunwar v. Murli*, 10 A. L. J. 52=16 I. C. 339.

<sup>4</sup> *Aminullah v. Hajira*, 26 A. W. N. 222.

<sup>5</sup> *Kunj Behari Lal v. Kishun Behari*, 4 I. C. 491.

<sup>6</sup> *Ramjas Singh v. Babu Nandan Singh*, 44 All. 686=1922 A. I. R. All. 424=70 I. C. 98.

<sup>7</sup> *Lachhman Prasad v. Raghubar Dayal*, 4 Luck. 667=1930 A. I. R. Oudh. 2=XI U. D. (H. C.) 295=13 R. D. 165.

<sup>8</sup> *Mahadin v. Hoshram Singh*, 1939 O. W. N. 903=1939 B. D. 586 (C. C.)

interpretation carries out the real intension of the legislature. For if he affirms the decision of the Court of first instance, he does give effect to the plea of jurisdiction, without reference to the materials on the record. The sections contemplate that there should be one trial on the merits in a Civil or Revenue Court. If, as often happens, the Civil Court in which a revenue suit is wrongly brought takes all the evidence, and then, after or without deciding all the issues in the case, returns the plaint to be presented to the proper Court, and the District Judge merely affirms that order, the intention of the legislature to avoid the bother and cost of two trials will be defeated. This was the view in an Oudh case<sup>1</sup>. Hence a more liberal interpretation of the expression "the appeal" would be consonant with the real intention of the legislature. The expression should be read for "the suit." This receives support from the expression "and the appellate court has before it all the material necessary for the determination of the suit" immediately preceding "it shall dispose of the appeal," and from sub-section (2). This of course, is on the view that sections 290, 291 apply also to appeals from orders, which as shown above (page 878) is open to question.

10. **District Judge.**—The powers conferred by section 290 and 296 may be exercised by a Subordinate Judge to whom the District Judge has transferred an appeal for disposal,<sup>2</sup> provided the suit was filed in the Court of the Munsif, as in 16 All 363. This is much more true where a Subordinate Judge has been authorised by the High Court to entertain appeals from Munsifs.<sup>3</sup>

11. **Cl. (3).**—An order of remand to a Court considered competent by the appellate court is not appealable.<sup>4</sup>

Where a suit is remanded by the District Judge to an Assistant Collector, the latter cannot refuse to try it on the ground that he has no jurisdiction.<sup>5</sup>

*A* sued *B* for the price of the produce of certain land in the Munsif's Court on the allegation that he was *B*'s partner in cultivation. The Munsif holding him to be a sub-tenant of *B* returned the plaint. The revenue court holding that *A* was not *B*'s sub-tenant dismissed the suit. On appeal, the District Judge ordered the return of the plaint for presentation to the Munsif, who tried it as a Court of Small Causes, found

<sup>1</sup> *Sangam Lal v. Barmha Din*, 1934 A. I. R. Oudh 95=XV U. D. (H. C.) 88=11 O. W. N. 67=18 R. D. 148.

<sup>2</sup> *Nondan Prasad v. Changur*, 16 All 363 (F. B.)=14 A. W. N. 113; *Afsal Shah v. Muh. Abdül Karim*, 37 All. 232=13 A. L. J. 638=5 R. and Cr. L. J. 13=29 I. C. 633; *Contra*, *Ram Prasad v. Rai Kishen*, 6 All. 36=3 A. W. N. 185; *Lodhi Singh v. Isri*, 6 All. 295=4 A. W. N. 96; *Debi Din v. Beni Prasad*, 4 A. W. N. 39, which do not appear to have been considered by the Full Bench in 16 All 363.

<sup>3</sup> *Pirithi Singh v. Lari Singh*, 46 I. C. 736 (A.).

<sup>4</sup> *Naubat Singh v. Baldeo Singh*, 9 I. C. 666; *Bholai Khan v. Abu Jafar*, 21 All. 267.

<sup>5</sup> *Ram Charan v. Muhammad Shafi*, 8 A. L. J. 894.

Rs. 20 due to C, but dismissed the suit on the ground that his previous decision was final and the District Judge had no jurisdiction to make the order he did. The Judicial Commissioner's Court held that the order of the Judge must be treated as equivalent to a remand of the case to the civil court and was binding on the Munsif.<sup>1</sup>

12. **Suits.**—Section 291 refers to *suits*. Under the Rent Act it was held that sections 206-208 (corresponding to sections 290, 291) did not apply to matters which could be the subject of any of the applications mentioned in section 95 of that Act.<sup>2</sup> An application to eject a tenant under section 35 (corresponding to section 175 of the present Act) was one of them.

## CHAPTER XV

### POWER TO MAKE RULES

Power of Provincial  
Government to make  
rules.

**292.** The Provincial Government may, after previous publication, make rules consistent with this Act—

- (a) as to the fees payable under this Act ;
- (b) as to the time of the year for execution of decrees for ejectment in any local area ;
- (c) as to the attestation of leases, counterparts and agreements under section 57 ;
- (d) as to the dates on which profits shall be divisible ;
- (e) generally for giving effect to the provisions of this Act.

1. This in effect reproduces section 274 of the Act of 1926 dropping clause (f). Section 274 of the Act of 1926 corresponded to section 203 of the Act of 1901 and to section 211 of the Rent Act.

2. In exercise of the powers conferred by this section the Provincial Government has made rules, known as the United Provinces Tenancy (Government) Rules, 1940, published in the U. P. Gazette dated 13th April, 1940, Part 1-A, pp. 223-227. See Appendix A.

**293.** The Board may, with the previous sanction of the Provincial Government, and after previous publication, make rules consistent with this Act and with any rules made under section 292—

Power of Board to  
make rules.

- (a) for the guidance of officers in the determination, enhancement, abatement, and commutation of rent :

<sup>1</sup> *Shankar v. Bhawani*, 5 O. C. 832.

<sup>2</sup> *Debi Das v. Ram Ratan*, 2 A. W. N. 213 ; *Ram Partab v. Dharam Singh*, 5 A. W. N. 231 ; *Ashgar Ali v. Sheopal*, 9 A. W. N. 24 ; *Ahmad-ud-din v. Khawani*, 9 A. W. N. 193 ; *Badam v. Badri*, 30 A. W. N. 209 ; *Jagannath v. Bhagwant*, 7 A. W. N. 266.

- (b) for the guidance of officers deciding applications under sections 15 and 16 and section 18 ;
- (c) for the guidance of officers deciding suits under section 49 ;
- (d) for the guidance of officers deciding applications under sections 53 and 54 ;
- (e) for the guidance of rent-rate officers ;
- (f) as to the manner of publication of a notice of abandonment ;
- (g) as to the procedure to be followed in applications under this Act ;
- (h) for the guidance of officers in executing a decree for arrears of rent by sale or lease of the interest of a tenant in a holding or part of a holding ;
- (i) as to the transfer of cases by revenue courts ;
- (j) as to the person before whom and the mode in which affidavits may be made and the matters which may be proved by affidavit ; and
- (k) generally for giving effect to the provisions of this Act.

1. This corresponds to section 275 of the Act of 1926, which corresponded to section 204 of the Act of 1901 and to the second para. of section 211 of the Rent Acts.

It corresponds to section 158 of the Oudh Act.

2. In exercise of the powers conferred by this section the Board of Revenue have made rules, known as the United Provinces Tenancy (Board of Revenue) Rules, 1940, published in the U. P. Gazette dated 13th July, 1940, Part 1-A, pp. 411-430. See Appendix B.

## CHAPTER XVI

### TRANSITIONAL PROVISIONS

**294.** (1) If after the first day of April, 1937, a tenant was ejected from his holding for non-payment of arrears of rent due on account of kharif 1344 Fasli or any previous instalments he may within six months of the commencement of this Act apply to the court which passed the order of ejectment to be reinstated in his holding and on receipt of such application the court after making such enquiry as it thinks fit shall order that

Application by ejected tenant for re-instatement in his holding.

the applicant be put in possession of the holding from which he was ejected and that any other person in possession of such holding be ejected therefrom :

Provided that if such holding or a part thereof was let to another person in the agricultural year 1345 Fasli and has since been continuously so let no order shall be passed under this section in respect of such holding or such part as the case may be.

(2) No person shall be re-instated in his holding or any part thereof under the provisions of this section unless within such time as may be allowed by the court he pays to the landholder—

(a) the cost of the proceedings which resulted in his ejectment, and

(b) any amount that may have been paid to him by the landholder as compensation for improvements when he was so ejected, and

(c) in a case in which the landholder has made an improvement on the holding since such ejectment, compensation for such improvement calculated in accordance with the provisions of this Act.

(3) No person shall be ejected from his holding under the provisions of this section until he has received compensation for any improvement made by him calculated in accordance with the provisions of this Act.

(4) On reinstatement the rights and liabilities of the applicant in respect of land from which he was ejected shall revive :

Provided that if he is reinstated in a part only of the land from which he was ejected, the applicant shall be liable to pay such rent as the court ordering such reinstatement may decide.

1. This is new. It is meant to benefit a tenant who was ejected after the first of April, 1937 on account of arrears of rent for Kharif 1344 and prior instalments. If a tenant so ejected applies within six months of the commencement of the Act to the Court which had ejected him to be reinstated on his land, the court will pass an order in his favour, unless the land was let to another person in the agricultural year 1345 F. (July 1, 1937 to June 30, 1938), and is still in his possession, subject to a refund and certain payments.

The refund will be of any compensation for improvements paid to him on his ejectment.

The payments to be made by an ejected tenant as a condition for reinstatement are (i) value of any improvement made by the landholder subsequent to the delivery of possession, and (ii) the costs for the suit or proceedings which resulted in the ejectment.



The person ejected on reinstatement of the original tenant is also entitled to be paid, as a condition precedent to his ejection, compensation for any improvement made by him.

One effect of a reinstatement is to revive the rights and liabilities of the person reinstated in respect of the land from which he was ejected.

Tenants ejected on other grounds than arrears of rent are not benefited by this section.<sup>1</sup>

2. The section applies where a decree for ejection was passed before 1st April 1937 but actually carried out after that date.<sup>2</sup>

"Ejected" in section 294 means actual transfer of possession on the spot and not merely the passing of a decree or order to the effect that the tenant be ejected. The order of ejection was passed in 1936 but actual ejection took place after 1st April 1937. Hence section 294 applied and the tenants were entitled to reinstatement.<sup>3</sup>

A tenant was ejected under section 79 of the Act of 1926 (present section 168). A subsequent ejection under section 44 of that Act (present section 180) does not operate as a bar to his reinstatement, provided the subsequent ejection was in consequence of the previous ejection under section 79.<sup>4</sup>

A tenant may be entitled to reinstatement even if he made default in payment of subsequent instalments of rent.<sup>5</sup>

Mortgagor of sir plot, holding as exproprietary tenant, ejected in execution of a decree for arrears of rent, sold all his rights in the land to the mortgagee. Held that the decree made no difference and that the sale was no bar to his reinstatement.<sup>6</sup>

3. An application under section 294 for recovery of possession is in Schedule IV, Group F, No. 10. The court-fee is one rupee.

**295.** Notwithstanding any contract to the contrary or anything in this Act or any other law for the time being in force, every person who at the commencement of this Act is a

<sup>1</sup> *Ambika v. Rana Uma Nath Bux Singh*, 1941 R. D. 403 (ejection both for arrears of rent under section 61 and sections 54/55 of the Oudh Act.)

<sup>2</sup> *Raj Narain v. Damodar Singh*, B. R. 1 of 1940—1941 R. D. 303 followed in *Bhagwanias v. Peman*, 1941 R. D. 417.

<sup>3</sup> *Bhagwanias v. Peman*, 1941 R. D. 417. See also *Dwarka Singh v. Sumer*, 1941 R. D. 521.

<sup>4</sup> *Raj Narain v. Damodar Singh*, B. R. 1 of 1940—1941 R. D. 303 followed in *Ram Sundar v. Bal Gobind*, 1941 R. D. 398, and in *Raghu Nath v. Ram Nath*, 1941 R. D. 498; *Hari Kishun Dass v. Sukhdei*, 1941 R. D. 608.

<sup>5</sup> *Ali Akhtar v. Dindyal*, 1941 R. D. 738.

<sup>6</sup> *Sant Bux Singh v. Muneshwar Singh*, 1941 R. D. 604.

sub-tenant in Oudh shall be entitled to retain possession of his holding for a period of five years from such commencement, and for this period nothing in sub-section (2) of section 44 or section 171 shall render the landholder of such sub-tenant liable to ejectment under the provisions of section 171 :

Provided that nothing in this section shall authorize a sub-tenant of a person who belongs to one of the classes mentioned in section 41 to retain possession of his holding after the disability of such person has ceased.

1. This is new and applies only to Oudh

2. A sub-tenant in possession at the date of the commencement of the Act is entitled to retain it for five years thereafter, the operation of sections 44 (2) and 171 being suspended for that period.

3. The proviso should be noted. A tenant protected by section 41 who has sublet after the cesser of his disability is not entitled to the benefit of this section.

**296.** A suit under any of the provisions of the Agra Tenancy Act, 1926 or the Oudh Rent Act, 1886, which is pending at the commencement of this Act or a decree under any of the provisions of either of these Acts, which has not been satisfied in full at such commencement, shall be decided or executed, as the case may be, in accordance with the corresponding provision of this Act and if there is no such corresponding provision, the proceedings relating to such suit or decree shall be quashed.

1. This is new.

It should be noted that a suit under the Acts of 1926 and 1886 pending at the commencement of this Act or a decree passed under the provisions of those Acts has to be decided or executed according to the provisions of this Act, and, in the absence of any provision therein for such purpose, the suit or decree shall be quashed.

2. Some of the suits mentioned in section 108 of the Oudh Act, 1886, are not provided for by this Act. If not decided when the Act comes into operation, they will stand quashed.

3. "Suit" in section 296 means a suit and nothing else. It does not apply to appeals.<sup>1</sup>

But an appellate court can take cognizance of the law having a retrospective effect made during the pendency of the appeal and in an appeal pending when this Act came into force can give effect

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<sup>1</sup> *Bindraban Katiar v. Ganga Ram*, 1940 A. L. J. 573—1940 R. D. 274. *Shoo Rakhan Lal v. Sunder Lal*, 1941 A. I. R. Oudh 81—1940 R. D. 552.

to section 296 which provides for execution according to this Act which imposes no limits such as contained in section 151 of the Oudh Act<sup>1</sup> (now repealed.)

The word 'suit' in this section does not include applications.<sup>2</sup>

Section 296 applies to (1) suits and (2) execution proceedings pending on 1st January 1940 and not to proceedings for redelivery of possession under section 151 of the Code of Civil Procedure.<sup>3</sup>

A suit cannot be said to be pending once it has been decided by the trial court. Section 296 refers to suits which have not already been decided when the new Act comes into force.<sup>4</sup>

Decree under section 61 of the Oudh Act can be executed in accordance with sections 181 (1) and 182 (1) of this Act,<sup>5</sup> even if the decree is based on a compromise provided for ejectment on default of payment of instalments.<sup>6</sup>

<sup>1</sup> *Pahlad v. Udai Bhan Pratab Singh*, 1941 R. D. 713 (distinguishing *Shao Roshan Lal v. Sunder Lal* cited above)

<sup>2</sup> *Kanak Singh v. Mahbub Ali Khan*, 1941 R. D. 81.

<sup>3</sup> *Aasan v. Prag Narain*, 1941 R. D. 586.

<sup>4</sup> *Bhagwati Prasad v. Ram Lautan*, 1940 R. D. 309 (O. C.)

<sup>5</sup> *Muh Amir v. Mata Din*, 1940 R. D. 557 (explaining the meaning of corresponding provisions); *Muh. Mehdi v. Barhu*, 1941 R. D. 166; *Khurshed Husain v. Ganga Prasad*, 1941 R. D. 585.

<sup>6</sup> *Silla Buz Singh v. Bakhtawar*, 1941 R. D. 523.

## THE FIRST SCHEDULE.

(See section 1).

**Areas to which the Act will not apply in the first instance.**

I.—The districts of Almora and Garhwal.

II.—In the district of Naini Tal—

(a) the Naini Tal sub-division ;

(b) the following villages of the Tarai and Bhabar Government estates :

*Pargana Bazpur.*

Bajawala	Gulzarpur
Bannakhera	Hazira
Bannakhera Sani	Haripura
Banskhera	Harsan
Banskheri	Khamari
Baraihni	Maindaya Hattoo
Bhainsia	Rajpura No. 1
Bhajwanagla	Ratanpuri
Bhikampur	Somalpuri
Bijai Rampura	Sheopuri
Chanakpur	Thapaknagla
Gularia Gobra	Kalabandwari
	Faridpur

*Pargana Gadarpur.*

Alakhdei	Madnapur
Andkhera	Maholi Jungle
Beria	Mukandpur
Bari Rain	Nandpur
Buxaura	Pipalia
Khanpur Pachcham	Kopa
Khanpur	Jafarpur
Kulha	Gadarpuri

*North of Kashipur.*

Kamdebpur	Kandala
Beria	Birpur Lachi
Lalitpur	Birpur Tara
Karailpuri	Rajpur
Thari	Pipalsana

*In Khushalpur Circle.*

Khushalpur	Lampur Lachi
Lampur Moti	Shahbazpur

(c) the Bhabar villages in the Tarai and Bhabar sub-division which are settled with *samindars*.

## Notes.

1. For the areas mentioned in this schedule the relations between landlords and tenants and their respective rights and duties have not yet been defined in a statute. They have mostly developed from case-law. See also the Kumayun Tenancy Rules given in Appendix F.

2. Most cultivators are proprietors of their holdings, but some of them are *khaikars* or tenants. These latter do not possess a right of transfer and have to pay a fixed sum as *malikana* to the proprietor or *hissedar*. *Khaikar* may be (i) *pucca* or (ii) *kutoha*. The former is a permanent tenant, while the latter is an occupancy tenant. Both have a heritable right in their holdings. Labourers or *sirtans* are mere tenants-at-will, having no right of transfer and having a heritable right only with the consent of the proprietor. *Khaikars* of some land may be *sirtans* in respect of others and *vice versa*.

3. **Khaikar tenants.** See *Gaje Singh v. Uchhakia*,<sup>1</sup> *Chaturia v. Gauri Datt*,<sup>2</sup> *Dharma Nand v. Debi Dutt*,<sup>3</sup> *Atma Ram v. Lalu*,<sup>4</sup> *Jaint Singh v. Nand Ram*,<sup>5</sup> *Pancham Singh v. Debram*,<sup>6</sup> *Jiva Nand v. Govind Ram*,<sup>7</sup> *Bhima Nand v. Hari Kishan*,<sup>8</sup> *Bhagot Singh v. Jasod Singh*.<sup>9</sup>

4. **Measured and unmeasured land**—See *Batuwa v. Sadiya*,<sup>10</sup> *Bishan Singh v. Sherred*,<sup>11</sup> *Gusain Singh v. Puran Singh*,<sup>12</sup> *Ram Rup v. Muli Ram*,<sup>13</sup> *Kharak Singh v. Hira Muni*.<sup>14</sup>

5. Where in a *pucca khaikar* village the *khaikar* paid revenue to the *muafidar* and Government conceded the right of the *muafidar* to the revenue, it does not affect the right of the *khaikars* and the land in their possession cannot become the *khudkasht* of the *muafidar*.<sup>15</sup>

Where a landholder allows a building to be put on a part of an agricultural holding, that part ceases to be agricultural land, and a suit for possession of a house and court yard on such part is not a suit in respect of any matter within serial number 15 of the first Schedule, read with Rules 3 and 9 of the Kumayun Tenancy Rules and cognizable by a Civil Court and not by a Revenue Court.<sup>16</sup>

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<sup>1</sup> 1929 A. I. R. All. 223=1929 A. L. J. 209=X U. D. (H. C.) 88=10 L. R. Rev. 138=13 R. D. 405.

<sup>2</sup> XI U. D. 166

<sup>3</sup> XI U. D. 182=11 L. R. Rev. 233=14 R. D. 635.

<sup>4</sup> XIII U. D. 10=12 L. R. Rev. 425=16 R. D. 69.

<sup>5</sup> 1938 A. I. R. All. 136=1938 A. L. J. 4=1931 R. D. 153.

<sup>6</sup> 1939 A. L. J. 1053=1939 R. D. 579.

<sup>7</sup> 1940 R. D. 326.

<sup>8</sup> 1940 R. D. 450.

<sup>9</sup> 1941 R. D. 761.

<sup>10</sup> X U. D. 167=13 R. D. 509.

<sup>11</sup> 1938 A. I. R. All. 529=1938 A. L. J. 711=177 I. C. 867.

<sup>12</sup> 1939 A. I. R. All. 301=1939 R. D. 141.

<sup>13</sup> 1941 R. D. 691.

<sup>14</sup> 1941 R. D. 693.

<sup>15</sup> *Devan Singh v. Gopal Dutt*. 8 L. R. Rev. 360=1927 R. C. 405.

<sup>16</sup> *Jathali Bhul v. Nadia*, 1932 A. I. R. All. 415=1932 A. L. J. 468=16 R. D. 413 applying *Jalesar Sahu v. Raj Mangal*, 43 All. 607=1921 A. I. R. All. 168.

## THE SECOND SCHEDULE.

(See section 243).

**Application of the Code of Civil Procedure, 1908.**

## LIST I.

*Sections and Orders of the Code of Civil Procedure, 1908,  
which do not apply to suits or proceedings under this Act.*

Section 9.

Sections 68 to 72 inclusive.

Section 88

Sections 113, 114, 115.

Order XXII, Rule 8.

- „ XXXIII (Pauper suits). The whole.
- „ XXXV (Interpleader suits). The whole.
- „ XXXVI (Special cases). The whole.
- „ XLIV (Pauper appeals). The whole.
- „ XLVI (Reference). The whole.

**Notes.**

List I of this Schedule is the same as list I of the Second Schedule of the Agra Act of 1926 which corresponded very nearly to clause (a) of section 193 of the Act of 1901. The inclusion in the list of sections 113, 114 and 115 means that no reference, review or revision can be had, except as provided by the Act, by any court or Judge administering the provisions of the Tenancy Act.

The High Court's power to revise is to be judged by section 276 of this Act and not by section 115 of the Code of Civil Procedure.

Qu. whether a High Court can review under section 274 of this Act.

## LIST II.

*Sections and Orders of the Code of Civil Procedure, 1908, which  
apply subject to the modifications stated against each.*

Serial No.	Sections.	Modifications.
1	24 ... ..	Applies only to the transfer of appeals under this Act by the High Court or the Chief Court from the court of one district judge to the court of another district judge.
2	33 ... ..	No decree need be prepared in the case of an application under this Act unless the preparation of a decree is prescribed by rule.

Serial No.	Sections.	Modifications.
3	58(2) ...	Where a judgment-debtor has been released from detention under this section, the court may declare him absolved from further liability for payment of money under that decree, and such liability shall thereupon be extinguished.
4	60 ...	To the particulars not liable to attachment or sale shall be added "mannre stocked by an agriculturist."
5	98 ...	Nothing in this section shall require two members of the Board to sit together in the exercise of appellate or revisional jurisdiction under this Act.
6	144 ...	In this section the words "or order" shall be deemed to be inserted after the word "decree" wherever it occurs.
7	Order V, Rules 9 to 30.	A summons or notice may, if the Provincial Government by rule, either generally or in respect of any local area or class of cases, so directs, be served by post in addition to any other mode of service.
8	Order VII, Rule 1	<p>In addition to the particulars contained in this rule, the plaint shall specify the name of the village and mahal and of the pargana or other local division, in which the land is situate to which the suit or other proceeding relates, and, unless such land can be otherwise adequately described, the number of each field according to the Government survey ;</p> <p>and if the suit is for arrears of rent, the plaint, shall contain a statement of account showing the annual demand for each period to which the suit relates, the amount, if any, received, and the amount claimed to be due ;</p> <p>and if the suit is for ejectment of a tenant, the plaint shall set forth the ground or grounds on which the ejectment is sued for.</p>
9	Order XX, Rule 6	Every decree for rent shall also state the amount including interest, due on account of each agricultural year in respect of which relief is granted.
10	Order XXI ...	(1) No application for the execution of a decree shall be made by an assignee of the decree unless the assignor's interest in the land to which it relates has become and is vested in such assignee.

Serial No.	Sections.	Modifications.
11		(2) If the property against which execution is applied for is a mahal or share of a mahal or the holding of a permanent tenure-holder, or the fixed-rate tenant or an under-proprietor the decree shall be sent to the Collector, who shall execute the same as if it had been a decree of his own court.
12	Order XLI, Rule 1, read with Order XLII	In addition to the copies required by this rule every memorandum of second appeal shall be accompanied by a copy of the judgment of the original court.
13	Order XLI, Rule 11	Nothing in this rule shall require the Board to hear any party before rejecting an appeal summarily.
14	Order XLI, Rules 30 and 31	No judgment of the Board need be dated or signed, or pronounced in open court

### Notes

**Items Nos. 1 and 2.**—Need no remark.

**Item No. 3.**—The Agra Act had the words “and the amount due under the decree does not exceed Rs. 100” which have now been removed, making the provision applicable to decrees of any amount.

Again the Agra Act had made an exception with regard to “liability to ejectment,” which was not extinguished. That exception also has now been removed.

**Item No. 4.**—Manure stocked by an agriculturist is not liable to attachment and sale.

**Item No. 5.**—Gives expression to the practice of members of the Board. Section 98 of the Code of Civil Procedure must be read subject to this item.

**Item No. 6.**—Makes section 144, C. P. C., expressly applicable, with the addition of “or order” after “decree.” Hence a suit for restitution does not lie.<sup>1</sup> The result of decreeing an appeal from a decree for ejectment is to restore the *status quo*, so that a subtenant of the tenant remains a subtenant although after the decree for ejectment the landlord had admitted him to be the tenant.<sup>2</sup>

**Item No. 7.**—(Corresponding to Item No. 8 of the Agra Act. Item No. 7 of that Act dealt with O. V, R. 5). Service of summons may be through the post. The latter part of the clause is in accordance with the

<sup>1</sup> *Chidda Singh v. Abdul Majid Khan*, 17 A. L. J. 174—5 Rev. and Cr. L. J. 85—49 I. C. 721; *Balwant Singh v. Gokaran Prasad*, B. R. 6 of 1884.

<sup>2</sup> *Astar v. Bishan*, 8 L. R. Rev. 319—VIII U. D. 88—1927 R. C. 364—11 R. D. 517.



rulings in *Lutf Ali v. Piari Mohan*,<sup>1</sup> *Jogendra Chandra v. Dwarka Nath*,<sup>2</sup> which held that a person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents.

**Item No 8**—(Corresponding to Item No. 9 of the Agra Act.) The particulars required for a plaint by Order 7, rules 1-6, must be amplified by the particulars required by this clause. Under section 148 (b) of the Bengal Tenancy Act, which contains a similar provision, there is a conflict of rulings as to whether a suit for arrears of rent which is defective as to the particulars required of the land in the plaint should be dismissed. Some are for dismissal while the others are not.

**Item No 10 of the Agra Act**—has been omitted. It dealt with O. VIII, R. 6. In view of the modification introduced by that item set-offs were not allowed except a set-off due to the defendant on an unsatisfied decree under that Act or the Acts repealed thereby.<sup>3</sup> Now set-off will be allowed as in a civil suit.

A lambardar holding a decree for arrears of revenue against a co-sharer could set it off against the claim of the assignee of the profits of a particular year from that co-sharer only if he proved (1) that the assignment was not *bona fide* and was fraudulent, and (2) that he paid the revenue for which he obtained the decree (under section 224) in the year for which profits were claimed.<sup>4</sup>

When costs were awarded to both parties in the same suit, the cost of one could be set-off as against that of the other.<sup>5</sup>

Decree for profits could be set-off against each other.<sup>6</sup>

A defence that the defendant holds plaintiff's land rent-free in consideration of plaintiff holding some land of defendant as rent-free is not a claim for set-off.<sup>7</sup>

Where a creditor is let into occupation of a tenant's holding at a rent, the major portion of which is to be paid to the zamindar for rent of the holding, payable by the tenant, and the balance is to be appropriated by the creditors for interest on the loan given by him, and the tenant sues the creditor for the entire rent, it was held that the payment of the rent of the holding to the zamindar was under the authority of the tenant and could not be claimed, and that appropriation of the balance by the creditor was not by way of set-off, as no part of the rent was payable to the tenant.<sup>8</sup>

<sup>1</sup> 16 W. R. 223.

<sup>2</sup> 15 Cal. 681.

<sup>3</sup> *Ganga Sahai v. Muh. Ali*, X U. D. 116—10 L. R. Rev. 124—13 R. D. 365.

<sup>4</sup> *Lallu Singh v. Chander Sen*, 56 All. 624 (F. B.)—1934 A. L. J. 1—1934 A. I. R. All. 155—18 R. D. 32.

<sup>5</sup> *Sri Prasad v. Gaura*, XIII U. D. 165—13 L. R. Rev. 397.

<sup>6</sup> *Rafi-un-nissa v. Abdul Aziz*, 3 Rev. and Cr. L. J. 9—II U. D. 199—3 R. D. 100.

<sup>7</sup> *Gaya Prasad v. Baldeo Singh*, II U. D. 161.

<sup>8</sup> *Khushaly v. Itwari*, XIII U. D. 59.

**Item No. 10.**—(Reproducing item No. 12 of the Act of 1926). An assignee of a decree cannot apply for execution unless the assignor's interest in the land to which it relates has become and is vested in such assignee.<sup>1</sup> Mutation of names is not necessary.<sup>2</sup> This clause is cl. (h) of section 148, Bengal Tenancy Act, under which it has been held that the word *assignee* does not include trustees who execute a decree under an assignment which is not for their own benefit but for the benefit of the heir of the assignor.<sup>3</sup> Nor does it include a person succeeding as heir. Upon the owner's death, the mother took out probate of his will and obtained a decree for rent. The probate was revoked at the instance of the last owner's son. It was held that he could execute the decree.<sup>4</sup> Where a thekadar after the end of his theka sold all his decrees for rent to the zamindar, the latter could not apply for execution.<sup>5</sup> An application for execution by the assignee of a decree which was obtained by a landholder for arrears of rent which accrued due between the date of sale of the holding in execution of a previous decree for rent and the date of the confirmation of such sale, is barred.<sup>6</sup>

When the landholder's interest in the land has not passed to the assignee of a decree for rent, a sale held in execution of the decree on the application of the assignee passes no title to the auction-purchaser.<sup>7</sup>

A decree passed in a suit for rent brought by a landholder who ceases to have interest in the land during the pendency of the suit is not a decree for rent. Where such a decree is assigned by the decree-holder and is afterwards re-assigned to him, this clause is no bar to the execution of the decree.<sup>8</sup>

**Item No. 11.**—(Reproducing item No. 13 of the Act of 1926 with the addition of "or the fixed-rate tenant or an under-proprietor.") The power of selling a mahal or a share thereof or the holding of a permanent tenure-holder or fixed-rate tenant or an under-proprietor is given

<sup>1</sup> This modifies *Prag Singh v. Prasad Singh*, B. R. 1 of 1887; *Baldeo v. Manohar*, 3 Leg. Rem. which ignored the right of an assignee altogether. See *Tulshi Prasad v. Moti Ram*, XV U. D. 441—15 L. R. Rev. 703—18 R. D. 606.

<sup>2</sup> *Gulab Debi v. Muh. Abdul Ghafur*, 1927 A. I. R. All. 492—VIII U. D. (H. C.) III—8 L. R. Rev. 113—1927 R. C. 100—101 I. C. 580—11 R. D. 606, (heir of assignee may also execute.)

<sup>3</sup> *Chatarpal Singh v. Gopi Chand*, 26 Cal. 750; *Maharaj Bahadur v. Forbes*, 35 Cal. 737.

<sup>4</sup> *Uma Sondury v. Brojonath*, 16 Cal. 347.

<sup>5</sup> *Dwarka Nath v. Pyare Mohan*, 1 C. W. N. 694.

<sup>6</sup> *Karuna Moi v. Surendra Nath*, 26 Cal. 176.

<sup>7</sup> *Gauri Charan v. Kartik Nath*, 10 C. W. N. 44.

<sup>8</sup> *Nagendra Nath v. Bhuvan Mohan*, 6 C. W. N. 91.

to the Collector. The provisions of O. 21, r. 54 and section 64 of the Code apply.<sup>1</sup> Should the judgment-debtor be the *recorded* proprietor of the share ? In B. R. 10 of 1883 a contrary opinion was given. Execution against a mahal or part of a mahal by an Assistant Collector is *ultra vires*.<sup>2</sup> An Assistant Collector to whom the Collector had transferred a decree for further enquiry acts *ultra vires* in dismissing the application for execution, which the Collector alone can do.<sup>3</sup> He cannot transfer it to a sale officer to an Assistant Collector who has not been invested with the power of a Collector.<sup>4</sup>

A purwa or hamlet is neither a mahal nor a share of a mahal and therefore this item does not apply to a sale of it.<sup>5</sup> Fruit trees are not standing timber and cannot be sold under rent decrees in virtue of this item.<sup>6</sup>

It is not the law now that before execution against immovable property can be had, the decree-holder must either take out execution against both person and movable property of the judgment-debtor, or prove to the satisfaction of the Court that it would be useless to do so, as was held under section 171 of the Rent Act in *Suraj Narain v. Sheo Baran*.<sup>7</sup> If before the proceedings in execution the share has been *bona fide* sold to a third person it cannot be sold under the Revenue Court decree.<sup>8</sup> Where execution is sought by the sale of ancestral land, the Collector alone can decide objections of the debtor and cannot refer them for trial to the original Court.<sup>9</sup>

The item does not apply to the holdings of rent-free grantees. Hence these need not be transferred to the Collector for sale.<sup>10</sup>

<sup>1</sup> *Sham Das v. Rajjab Ali*, B. R. 4 of 1897. The sale should be under the C. P. C. and not Chapter 40, Revenue Court Manual, *Bhopal v. Mansapuri*, XVI U. D. 167 ; *Mugaddam Ali v. Makeruddhuj Singh*, 1936 R. D. 197.

<sup>2</sup> *Chandan Singh v. Ranjit Singh*, B. R. 2 of 1904.

<sup>3</sup> *Maharaja of Benares v. Daljit Singh*, II U. D. 216.

<sup>4</sup> *Mugaddam Ali v. Makeruddhuj Singh*, 1936 R. D. 197.

<sup>5</sup> *Nehal Singh v. Jagan Nath*, 1925 A. I. R. All. 438=12 Rev. and Cr. L. J. 71=6 L. R. Rev. 189, 240=1925 R. C. 345, 483=VI U. D. (H. C.) 531, 600=88 I. C. 613, R. D. 94.

<sup>6</sup> *Sarju Singh v. Bijai Bahadur Singh*, 49 All. 330=25 A. L. J. 199=1927 A. I. R. All. 254=VIII U. D. (H. C.) 135=8 L. R. Rev. 135=1927 R. C. 125=101 I. C. 287=11 R. D. 490

<sup>7</sup> B. R. 12 of 1892=12 A. W. N. 15.

<sup>8</sup> *Abdul Rahman v. Bhawani Din*, B. R. 7 of 1883, overruling *Madan Mohan v. Dharam Lal*, 2 Leg. Rem. 63.

<sup>9</sup> *Kumuda Prasad v. Maharaja of Benares*, 12 Rev. and Cr. L. J. 194=1926 R. C. 159=VII U. D. 133=7 L. R. Rev. 185=10 R. D. 488.

<sup>10</sup> *Gulzari Lal v. Mondra*, II U. D. 37=2 R. and Cr. L. J. 21.

**Item No. 12.**—(Corresponding to item No. 14 of the Act of 1926). In second appeal a copy of the original Court's judgment has also to be filed. See notes to section 243 above at pp. 766-767.

**Item No. 13.**—(Corresponding to item No. 15 of the Act of 1926). See section 268 and note thereunder at p. 823.

**Item No. 16 of the Act of 1926.**—Has been removed. It dealt with O. 41, R. 22 (1) and restricted the right of the respondent before a Revenue Court to raise a question of proprietary title decided against him by the lower Court without intimating the intention to the appellate court within one month from service of notice of date of the hearing. Now the appellate Court in such matters will be a Civil Court and not the Revenue Court. (*Vide* sub-section (4) of section 286.

### THE THIRD SCHEDULE.

(See section 55.)

#### FORM OF LEASE OR COUNTERPART.

I,  $\frac{A, B}{F, G}$ , son of  $\frac{C, D}{H, I}$ , resident of  $E/J$ , have  $\frac{\text{leased}}{\text{taken on lease}}$  the under-mentioned land  $\frac{\text{to } F, G}{\text{from } A, B}$ , son of  $\frac{H, I}{C, D}$ , resident of  $J/E$ , in *mahal K*, *mauza L*,

(here adequately describe the holding and give details mentioned in section 55),

at an annual rent of Rs (     ), payable in the following instalments and on the following dates, namely :

(     ) Rs. on the (     ) day of (     )

(     ) Rs. on the (     ) day of (     )

(     ) Rs. on the (     ) day of (     )

(     ) Rs. on the (     ) day of (     )

\* the period of the lease being for (     ) years, that is to say from (date) to (date)

Dated the (     ) day of (     ), 19

Signed } (A, B, landholder.  
(or marked) } F, G, tenant.)

Witness, (if marked) M, N.

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\* To be filled up in the case of non-occupancy tenants only, and to be struck out in all other cases.

## THE FOURTH SCHEDULE.

## Powers of Court, etc.

*The jurisdiction both original and appellate specified in the heading of each Group is in all cases subject to the provisions of sections 264, 286 and 288.*

## GROUP A—SUITS.

[Suits triable by assistant collector of the first class—appeal, if any, to the civil court; suits under Serial Nos. 1 to 6 inclusive, when not exceeding Rs. 200 in value, are triable by an assistant collector of the second class—appeal to collector.]

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
1	140	For recovery of a deposit of rent	Three years ...	When the amount deposited was paid by the tahsildar.	As in the Court-Fees Act, 1870.
2	144, 148	For arrears of rent	Ditto	Fifteen days after the arrear became due.	Ditto.
3	149	For recovery of rent paid by, or recovered from, a co-tenant on account of another co-tenant.	Ditto	Date of payment or recovery.	Ditto.
4	152	For the recovery of canal dues	Ditto	Date of delivery of canal jamabandi.	Ditto.
5	154 (4)(b)	To recover an amount realized in excess	Ditto	When the excess was realized.	Ditto.

6	163 (5), 169 (5)	For arrears of rent	...	...	None	None	Ditto.
7	172	For the ejectment of a tenant	...	...	One year	When the detrimental or inconsistent act is done or the condition is broken.	Ditto.
8	174	For an injunction, or for the repair of damage or waste, or for compensation.			Ditto	When the damage is done or the waste begins, or the condition is broken.	Ditto.
9	224	By a <i>lambardar</i> to recover from a co-sharer arrears of revenue, or rent, village ex- penses, and other dues.			Three years	When the arrears become due.	Ditto.
10	225	By a <i>lambardar</i> to recover from joint <i>lam- bardar</i> who defaults arrears of revenue or rent paid by the former on account of the latter.			Ditto	When the rent or revenue was paid.	Ditto.
11	226	By a co-sharer to recover from a <i>lambardar</i> or another co-sharer who defaults arrears of revenue or rent paid by the former on account of the latter.			Ditto	When the arrears were paid.	Ditto.
12	227	By a <i>muqaddar</i> or assignee of revenue for arrears of revenue due to him as such.			Ditto	When the arrears became due.	Ditto.
13	228	By a superior proprietor for arrears of re- venue or rent due to him as such.			Three years	When the arrears became due.	Ditto.

Serial No.	Section of Act.	Description of suits.	Period of limitation.	Time from which period begins to run.	Proper court fees.
14	230	By a co-sharer against the <i>lambardar</i> for his share of the profits of a <i>mahal</i> , or of any part thereof.	Ditto ...	When the profits became divisible under section 229.	As in the Court Fees Act, 1870.
15	231	By a co-sharer against the co-sharer for the settlement of accounts and his share of the profits of the <i>mahal</i> , or of any part thereof.	Ditto ...	Ditto ...	Ditto.
16	236 (a)	For compensation for any sum or produce collected in excess of the amount due.	Three months ...	The date of the collection	Eight annas.
	236 (b)	For compensation for charging interest at a rate exceeding that allowed by the Act.	Ditto ...	The date of the charging	Ditto.
	236 (c)	For compensation for infringing the provisions of section 90 or collecting any sum not recoverable under section 91.	Ditto ...	The date of the collection or infringement.	Ditto.
	236 (d)	For compensation for collecting remitted or suspended rent.	Six months ...	Ditto ...	Ditto.
	236 (e)	For compensation for crediting payment made towards rent or <i>sayar</i> otherwise than in rent for <i>sayar</i> or otherwise than in accordance with the provisions of section 130.	Ditto ...	The date when payment wrongly credited.	Ditto.

## Notes.

**Item No. 2.**—(Corresponding to item no. 4 of the Act of 1926). Under the Agra Act the period of limitation commenced from the time when the arrears became due. But under the present Act it commences from 15 days after the arrears became due.

**Item No. 5.**—(Corresponding to section 108 (13A) of the Oudh Act.) The period of limitation according to the Oudh Act was only one year. Now it has been increased to three years.

**Item No. 7.**—(Corresponding to item no. 2 of the Act of 1926). The court fee is leviable on the value of the suit as calculated according to section 7 (xi) (c c) of the Court Fees Act.

**Item No. 9.**—(Corresponding to item No. 10 of the Agra Act and to section 108 (16) of the Oudh Act). Under the Oudh Act the limitation for recovery of village expenses and other dues was only one year. Now it is three years.

**Item No. 10.**—(Corresponding to section 108 (16) of the Oudh Act). Under the Oudh Act the limitation was only one year and it commenced from the date of payment.<sup>1</sup> Under the present Act it is three years and commences from the time when the revenue was paid.

**Item No. 15.**—(Corresponding to item No. 15 of the Agra Act and section 108 (15) of the Oudh Act). Under the Oudh Act the period of limitation was only one year.<sup>2</sup> Under the present Act it is three years.

**Item No. 16.**—(Corresponding to item No. 1 of the Agra Act and to section 108 (9a) of the Oudh Act). The period of limitation under the Agra Act was only one month and under the Oudh Act one year. Under the present Act it is three months.

There is also a change in the court-fee. Under the Agra Act it was payable as in the Court Fees Act (on the amount of compensation). Now a fixed court-fee of eight annas only has to be paid, whatever the amount of compensation claimed may be.

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<sup>1</sup> *Boja Ram v. Menda*, 7 O. C. 14.

<sup>2</sup> *Brij Raj Singh v. Ram Pragas*, 7 O. C. 84.



## GROUP B—SUITS.

[Suits triable by assistant collector of the first class—appeal to commissioner except in the case of Serial Nos. 20, 21, 22 which are governed by section 202.]

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	49	For division of a holding and distribution of rent.	None	...	As in the Court Fees Act, 1870, on rent payable in respect of the part to be separated. Eight annas.
2	55	For a lease or counterpart ...	Ditto	Ditto	Ditto.
3	59	For a declaration of plaintiff's right as tenant or for a share in a joint holding.	Ditto	Ditto	Ditto.
4	60	By a landholder for a declaration of the right of a person claiming to be tenant.	Ditto	Ditto	Ditto.
5	61	For a declaration as to any matters specified in section 55 (2).	Ditto	Ditto	Ditto.
6	63	For a declaration that land claimed as tenancy is <i>sir</i> or <i>khadkash</i> or <i>vice versa</i> .	Ditto	Ditto	Ditto.
7	85	To have a notice of surrender declared invalid.	Fifteen days	The date of the receipt or service of the notice.	Ditto.
8	94	For determination of rent and for arrears ...	As in section 94	As in section 94	As in the Court Fees Act, 1870.

9	108	For the determination, abatement, enhancement or commutation of rent.	As in section 108	As in section 108	...	Ditto.
10	113	For commutation of rent	None	None	...	Ditto.
11	114	For abatement of the rent of a tenant other than permanent tenure-holder or fixed-rate tenant.	Ditto	Ditto	...	Ditto.
12	115	For abatement of the rent of fixed-rate tenant.	Ditto	Ditto	...	Ditto.
13	116	For abatement of rent of an under-proprietor or permanent lessee.	Ditto	Ditto	...	Ditto.
14	117	For enhancement of the rent of a tenant other than a permanent tenure-holder or a fixed-rate tenant.	Ditto	Ditto	...	Ditto.
15	118	For enhancement of rent of fixed-rate tenant.	Ditto	Ditto	...	Ditto.
16	171	For ejectment of a tenant and his transferee on account of an illegal sub-lease or other transfer.	Ditto	Ditto	...	Ditto.
17	179	For the ejectment of a non-occupancy tenant who contests his liability to ejectment.	Ditto	Ditto	...	As in the Court Fees Act, 1870, on the rent payable.

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
18	180	<p>For the ejectment of a person occupying land without title and for damages—</p> <p>(1) If the land is contiguous to any other land lawfully occupied by such person—</p> <p>(a) if such person has, at the commencement of this Act, occupied the land for more than six years since the landholder first knew of the unauthorized occupation ;</p> <p>(b) in any other case ...</p> <p>(2) in any other case—</p> <p>(a) if such person has, at the commencement of this Act, occupied the land for more than 9 years since the landholder first knew of the unauthorized occupation.</p>	<p>Twelve years ...</p> <p>Six years ...</p> <p>Twelve years ...</p>	<p>When the landholder first knew of the unauthorized occupation.</p> <p>From the 1st July following the date of such occupation or following the date of the commencement of this Act, whichever is later.</p> <p>When the landholder first knew of the unauthorized occupation.</p>	<p>As in the Court Fees Act, 1870, on the rent payable.</p> <p>Ditto.</p> <p>Ditto.</p>

19	183	For recovery of possession of a holding or for compensation or both.	...	Three years ...	From the 1st July following the date of the unauthorized occupation or following the date of the commencement of this Act, whichever is later.	Ditto.
20	190, 192	For declaration and the assessment of revenue or rent on a grant.	None	None	When the wrongful possession takes place or when the tenant is prevented from obtaining possession.	As in the Court Fees Act, 1870.
21	190, 194	For fixing rent on a rent-free grant, or for enhancing rent on grants held at a favourable rate of rent.	Ditto	Ditto	...	As in the Court Fees Act, 1870, according to the annual letting value of the land as estimated by the plaintiff.
22	190, 195	For the ejectment of a rent-free grantee or of a grantee holding at a favourable rate of rent.	Twelve years ...	As in section, 196	...	Ditto.

## Notes.

**Item No. 2.**—(Corresponding to item No. 18 of the *Agra Act* and to section 108 (1) of the *Oudh Act*). Under the *Agra Act* the court fee was payable as in the *Court Fees Act*. Under the present Act a fixed court-fee of eight annas is payable.

**Item No. 7**—(Corresponding to item No. 16 of the *Agra Act* and to section 108 (10) of the *Oudh Act*). Under the *Oudh Act* the period of limitation was thirty days. Under the present Act it is only fifteen days.

**Item No. 8.**—(Corresponding to item No. 13 of the *Agra Act* and section 108 (3a) of the *Oudh Act*). Under the present Act a claim for the arrears of rent can be added to a prayer for determination of rent which could not be done under the repeated Acts. See notes on section 94 *ante*. For court fees see section 7 (xi) (b) of the *Court Fees Act*.

**Item No. 6 of the *Agra Act*.**—Or that item has been omitted. It provided for a suit for enhancement or abatement of rent against or by a number of tenants collectively. It was a suit under section 62 of that Act which corresponds to section 122 of the present Act for which no item is provided in this schedule.

**Item No. 14.**—(Corresponding partly to item No. 5 and to item No. 7 of the *Agra Act* and to section 108 (3) of the *Oudh Act*). The court fee is as prescribed in the *Court Fees Act*. But that Act does not prescribe the court fee in case of all such tenant. It does not mention non-occupancy tenants. How is then the court fee to be levied in a case not specifically provided for in that Act? Will it be on the basis of plaintiff's valuation or on the scale of occupancy tenant (on the analogy of the *Agra Act*.) (Item No. 7 of Group B of the Fourth Schedule.)

**Item No 18.**—(Corresponding to item No. 2 of the *Agra Act* and to section 127 of the *Oudh Act*).

**Limitation**—Under the *Agra Act* the period of limitation was twelve years and it commenced from the time when the land-holder first knew of the unauthorized occupation. Under the present Act a great change has been effected. Now there are three different periods, namely, 12 years, 6 years and 3 years, prescribed for different cases.

(a) The period is 12 years (i) in case of the land being contiguous to any other land lawfully occupied by the defendant, if he has at the commencement of this Act occupied the land for more than 6 years since the landholder first knew of the unauthorised occupation, and (ii) in case of the land not being so contiguous, if the defendant has at the commencement of this Act occupied the land for more than 9 years since the landholder first knew of the unauthorised occupation. In either case the period is to commence from the time when the land-holder first knew of the unauthorised occupation.

(b) The period is 6 years in case of the land being contiguous to any other land lawfully occupied by the defendant, if the case does not come under (a) (i) above.

The period of limitation commences from the 1st of July following the date of such occupation or following the date of the commencement of this Act, whichever is later.

(c) The period is 3 years in other cases and it commences as in (b) above.

*Court.* The court fee is to be levied as in the Court Fees Act on the rent payable. But what is the rent payable if the land is in possession of a trespasser? Is it the rent mentioned in the revenue papers, if any, or is it the rent which the plaintiff chooses to nominate?

**Item No. 19** —(Corresponding to item No. 12 of the Agra Act and to sections 108 (9c), 108 (10), and 108 (13) of the Oudh Act.)

*Limitation.* Under the present Act the period of limitation is 3 years. Under the Agra Act it was only six months. Under the Oudh Act it was one year.

GROUP C—APPLICATIONS TRIABLE BY THE TAHSILDAR.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	84	For the service of a notice of surrender under section 82 or 83.	As in section 84	As in section 84	Nil.
2	137	For permission to deposit rent	None	None	(i) If the amount deposited does not exceed Rs. 50—four annas. (ii) If the amount deposited exceeds Rs. 50 but does not exceed Rs. 100—eight annas. (iii) If the amount deposited exceeds Rs. 100—one rupee.
3	138 (4)	For payment or refund of rent deposited under section 137.	Ditto	Ditto	As in the Court Fees Act, 1870
4	142	For the deputation of an officer to make division, estimate or appraisement of produce or crops.	Ditto	Ditto	Ditto.
5	163 (1)	For the issue of a notice to an expropriatory, occupancy or hereditary tenant.	As in section 163	As in section 163	Ditto.
6	169 (1)	For arrears of rent or ejectment in default of a non-occupancy tenant.	Three years	When the arrears became due.	Ditto.
7	175	For the ejectment of non-occupancy tenant.	None	None	Eight annas.

## Notes. •

**Item No. 2.**—(Corresponding to item No. 5 of the Agra Act and to section 14 of the Oudh Act.)

*Court fee.* Under the Agra Act there was a fixed fee of one rupee, whatever the amount deposited may be. Under the present Act there is a scale of fees. If the amount deposited does not exceed Rs. 50, it is four annas; if the amount exceeds Rs. 50 but does not exceed Rs. 100, it is eight annas; if the amount exceeds Rs. 100, it is one rupee.

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## GROUP D—APPLICATIONS TRIABLE BY ASSISTANT COLLECTOR IN CHARGE OF SUB-DIVISION.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	15	Demarcation of joint <i>sir</i>	None	None	Eight annas.
2	16	Demarcation of <i>sir</i>	Ditto	Ditto	Ditto.
3	52	To have an exchange of land recorded in the record of rights.	Ditto	Ditto	As in the Court Fees Act, 1870, according to the amount of rent payable for the more highly rented of the two pieces of land exchanged. For this purpose the rent of <i>sir</i> shall be the valuation of such land at the rate applicable to hereditary tenants.
4	53	For exchange of land	Ditto	Ditto	Ditto
5	70	For permission to make an improvement	Ditto	Ditto	As in the Court Fees Act, 1870.
6	71	Ditto	Ditto	Ditto	Ditto.
7	77	Registration of works	Six months	The date of the completion of the improvement.	Nil.
8	79 (a) or (d)	For establishment of right to make or benefit from a work.	None	None	As in the Court Fees Act, 1870.

9	79 (b) or (c)	For settlement of dispute as to an improvement or as to compensation or abatement of rent	One year	...	The date of the completion of the improvement.	Ditto.
10	80	For an order prohibiting the planting of tree or removing the trees planted.	None	...	...	Ditto.
11	81	For ownership of trees	Ditto	...	Ditto	Ditto.

## Notes.

## Item No. 3.—Corresponding to item No. 1 of Group E of the Agra Act.)

*Court.* Under the Agra Act the application mentioned in this item was triable by Collector and an appeal lay to the Board of Revenue. But under the present Act it is triable by an Assistant Collector in charge of sub-division, and there is no right of appeal.

*Court fee.* As under the Agra Act the Court fee is to be paid on the amount of rent of the more highly rented of the two pieces of land exchanged the present Act provides for the calculation of rent of *sir*, which shall be the valuation of such land at the rate applicable to hereditary tenants.

GROUP E—APPLICATIONS TRIABLE BY THE COLLECTOR.

Seria. No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	54	For acquisition of land ...	None ...	None ...	As in the Court Fees Act, 1870, according to the amount of rent payable for the land acquired.
2	54(4) <sup>1</sup>	For restoration of the land acquired ...	Six months ...	Expiry of three years from the date of the order of acquisition.	Eight annas.
3	91(4)	For remission of revenue ...	None ...	None ...	As in the Court Fees Act, 1870.
4	154	For collection of rent or <i>canal dues</i> <sup>2</sup> as land revenue in case of general refusal to pay.	So long as notification remains in force.	When notification in the official <i>Gazette</i> is published.	As on the plaint for arrears of rent.

<sup>1</sup> There appears to be a mistake about the sub-section. The correct reference is 54 (5).<sup>2</sup> The words in italics were added by the United Provinces Tenancy (Amendment) Act, I of 1940.

**Notes.**

**Item No. 2.**—(Corresponding to item No. 4 of the *Agra Act* and to section 108 (10a) of the *Oudh Act*).

*Limitation.*—The period of limitation is 6 months as in the *Agra Act*, but there is a change as regards the time when it commences. Under the *Agra Act* it commenced from the expiry of *two* years from the *date of acquisition*, or the date of admission of another tenant or the use of land for any other purpose, as the case may be. Under the present Act it commences from the expiry of *three* years from the *date of the order of acquisition*.

*Court fee.* Under the *Agra Act* the court fee levied was according to the amount of rent payable for the land acquired. Under the present Act there is a fixed court fee of eight annas.

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## GROUP F—OTHER APPLICATIONS.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	95	For determination of rent after ejectment from, or surrender of part of, holding.	None	None	As in the Court Fees Act, 1870.
2	160	For determination of value of crops or trees and of compensation.	Ditto	Ditto	Ditto.
3	168	For the ejectment of an expropriatory, occupancy or hereditary tenant on the ground of an unsatisfied decree for arrears of rent.	Two years	On the expiry of one year from the date of the decree.	Ditto.
4	170	For the ejectment of non occupancy tenant on the ground of an unsatisfied decree for arrears of rent.	Three years	The date of final decree in the case.	Ditto
5	...	For the execution of a money decree or a decree under section 180 or section 183 in as far as it relates to the payment of damages or compensation, not being a decree for a sum exceeding Rs 500 inclusive of the costs of executing such decree, but exclusive of any interest which may have accrued after decree upon the sum decreed.	Ditto	Ditto	Ditto.

6	...	For the execution of any money decree or a decree under section 180 or section 183 in as far as it relates to the payment of damages or compensation for a sum of money exceeding Rs. 500 inclusive of the costs of executing such decree, but exclusive of any interest which may have accrued after decree upon the sum decreed.	The period allowed for the execution of a decree of the civil court.	As in the case of a decree of the civil court.	Ditto.
7	...	For the execution of any decree other than a money decree.	One year	The date of the final decree in the case.	Ditto.
8	273 & 274	For a review of judgment	Ninety days	The date of the decree or order.	As in the Court Fees Act, 1870.
9	275, 276	For revision	None	None	Ditto.
10	294	For recovery of possession	As in the section.	As in the section	One rupee.

## Notes.

**Item No. 1.**—(Corresponding to Item No. 8 of the Agra Act.)

*Limitation.*—Under the Agra Act there was a period of limitation prescribed for such an application. It was six months commencing from the date of the decree or order of ejectment. The present Act prescribes no limitation for such application.

*Surrender.*—The Agra Act made no provision for such application in case of surrender, it provided only for the case of ejectment; the present Act provides for the case of surrender also.

**Item No. 2.**—(Corresponding to item No. 6 of the Agra Act).

*Limitation.*—Under the Agra Act there was a period of limitation prescribed for the application. It was fifteen days commencing from the date of delivery of possession. Under the present Act there is no limitation.

**Items Nos. 3 and 4.**—(Corresponding to Item No. 2 of the Agra Act).

*Tenant.*—The Agra Act made a general provision for the ejectment of (all classes of) tenants for an unsatisfied decree for arrears of rent. The present Act has drawn a distinction between an expropriatory, occupancy and hereditary tenant on the one hand and non-occupancy tenant on the other. The former is dealt with under section 168 and is provided for in item No. 3, while the latter is dealt with under section 170 and is provided for in item No. 4.

*Limitation.*—Under the Agra Act there was a general limitation (for all tenants) of three years which commenced from the date of the final decree in the case. Under the present Act it remains unchanged in item No. 4, that is to say, in the case of non-occupancy tenant. But in case of other tenants provided for in item No. 3 the limitation is two years and it commences on the expiry of one year from the date of the decree.

**Items Nos. 5, 6 and 7.**—(Item No. 5 corresponding to Items Nos. 2 and 3A, item No. 6 to item No. 4, and item No. 7 to item No. 5 of the Agra Act. Item No. 3-A of the Agra Act prescribed for an extended period of limitation, namely, three years and 6 months in certain circumstances of agricultural calamities. There is no such provision now.)

These three items deal with execution of decrees. Decrees are divided into three classes :—

(a) Decrees for money not exceeding Rs. 500, inclusive of the cost of execution (Item No. 5). A money decree is one which awards money only and does not include a decree for possession coupled with damage or compensation or costs.<sup>1</sup>

The limitation is three years from the date of the final decree in the case. If there has been an appeal, the date is that of the decree of the appellate court.<sup>2</sup> If an application be made within three years another

<sup>1</sup> *Shri Ram Chandraj Lalmanji v Ajudhi*, 14 L. R. Rev. 877=XV U. D. 22=1 L. R. Rev. 585=17 R. D. 1116.

<sup>2</sup> *Siraj Ahmad v. Vithal Das*, B. R. 7 of 1888.

in continuation of it will not be taken to be a separate application, *e. g.*, to appoint the guardian of a minor, the one named in the prior application having declined to act;<sup>1</sup> or to take out execution against some property other than that attached under the prior application,<sup>2</sup> or against the person of the debtor.<sup>3</sup> But no new application for execution can be made after the lapse of three years from the date of the decree.<sup>4</sup> An application for attachment and sale of immovable property is not a continuation of an infructuous application for attachment and sale of standing crops<sup>5</sup> or trees<sup>6</sup> or an application under section 59<sup>7</sup> of the Act of 1926, or of an application to execute the decree in some other way, *e. g.*, by attachment of certain decrees in favour of the debtor.<sup>8</sup> Section 48, Code of Civil Procedure, giving a maximum period of 12 years does not apply.<sup>9</sup> In calculating the sum of Rs. 500 interest after the decree is not to be taken into account.

A decree for costs alone in an ejectment suit is a money decree.<sup>10</sup> A decree for possession under section 183 with costs is not a money decree, the costs being subsidiary part of the decree.<sup>11</sup> A decree for abatement of rent with costs to defendant zamindar (of Commissioner's Court and of Board which had remanded in case for retrial setting aside the *ex parte* decree of the first court) is not a money decree.<sup>12</sup>

Article 182 of the Limitation Act evidently is not intended to apply to these two cases.

(b) Decrees for money, for a sum exceeding Rs. 500 inclusive of the costs of execution (Item No. 6). The limitation is as for a Civil Court decree. That is, 12 years is the limit, provided the first application is made within 3 years of the final decree and more than three years do not elapse between any two consecutive applications. Article 182 of the Limitation Act will apply.

A decree for arrears of rent becomes time-barred in the absence of an application for execution within three years or of some step in aid of execution. Application under section 79 of the Act of 1926 to eject the tenant is an application to execute the decree for arrears or a step in

<sup>1</sup> *Janki Prasad v. Baladin*, B. R. 14 of 1891.

<sup>2</sup> *Mithan Lal v. Nahar Singh*, XIV U. D. 166—14 L. R. Rev. 430—17 R. D. 539 ; *Deep Chand v. Maharaj Prasad*, XVI U. D. 176.

<sup>3</sup> *Debi Prasad v. Mahendra Singh*, B. R. 2 of 1904.

<sup>4</sup> *Mohabbat v. Bahadur*, 3 A. L. J. 324—26 A. W. N. 97.

<sup>5</sup> *Roshan Singh v. Saraswati*, IX U. D. 101.

<sup>6</sup> *Raja Ram Singh v. Melai Singh*, 1935 R. D. 406.

<sup>7</sup> *Roshan Singh v. Saraswati*, 9 L. R. Rev. 293—IX U. D. 101—12 R. D. 697 ; *Tulshi Prasad v. Gulsari Lal*, XIII U. D. 176.

<sup>8</sup> *Tulshi Prasad v. Gulsari Lal*, 14 L. R. Rev. 71—XIII U. D. 176.

<sup>9</sup> *Sharfuddin v. Baldev Prasad*, II U. D. 570.

<sup>10</sup> *Ram Harakh v. Madar*, III U. D. 255—4 R. D. 80—5 R. D. 417 ; *Uma Shankar v. Siddheshwar Prasad*, 1940 R. D. 133.

<sup>11</sup> *Shiam Lal v. Chaube Beni Madho Rao*, XIII U. D. 78—XIV U. D. 319—16 R. D. 385.

<sup>12</sup> *Khalil Ahmad v. Laltya*, 1937 R. D. 448.



aid thereof.<sup>1</sup> An instalment decree provided for acceleration in case of default. *Held*, time began to run from the date of default.<sup>2</sup>

In this connection compare the provisions relating to execution of decrees of civil courts contained in Chapter III, particularly in section 15, of the United Provinces Debt-Redemption Act, No. XIII of 1940 and also those contained in Chapter III, particularly in section 9, of the United Provinces Regulation of Agricultural Credit Act No. XIV of 1940.

(c) Decrees other than money decrees, (Item No. 7), *e. g.*, for possession, injunction, execution of a *kabuliat* or lease. The limitation is one year from the date of the final decree in the case, whether in appeal or otherwise.

**Item No. 8.**—(Corresponding to item No. 9 of the Agrn Act and section 120 (A) of the Oudh Act).

**Review.**—If the application is beyond 90 days, sufficient cause must be shown.<sup>3</sup>

<sup>1</sup> This perhaps overrides *Maharaja of Dumrao v. Budha*, 25 A. W. N. 213 ; *Keisho Prasad Singh v. Baiju Rai*, B. R. 9 of 1912. See notes to sections 168 and 170.

<sup>2</sup> *Hukam Singh v. Sri Thakur Bankateshji*, 7 L. R. Rev. 347—1926 B. C. 430—VII U. D. 204—10 R. D. 532.

<sup>3</sup> *Har Sukh v. Shib Dayal Singh*, XV. U. D. 187—18 R. D. 233.

## GROUP G—APPEALS.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	...	To a Collector ... ..	Thirty days ...	The date of the decree or order appealed against.	As in the Court Fees Act, 1870.
2	...	To a Commissioner or to a District Judge ...	Ditto ...	Ditto ...	Ditto.
3	...	To the Board, High Court or the Chief Court.	Ninety days ...	Ditto ...	Ditto.

## Notes.

Item No. 2.—(Corresponding to item No. 2 of the Agra Act and to section 118 of the Oudh Act).

*Limitation.*—Under the Oudh Act the period of limitation for an appeal to the commissioner was *sixty* days. Under the present Act it is only *thirty* days.

*Limitation Act.*—For the application of the Limitation Act see notes to section 253 *supra*.

## III SCHEDULE.

(See section 136).

## FORM OF COUNTERFOIL AND RECEIPT FOR RENT.

NOTE—In the forms sold to Court of Wards Estates and to other proprietors, if they so desire, the receipt portion will be printed in duplicate.

## COUNTERFOIL.

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_  
 Receipt No. \_\_\_\_\_  
 Name of landholder \_\_\_\_\_  
 Received from tenant (name and father's name) \_\_\_\_\_  
 of village \_\_\_\_\_, mahal \_\_\_\_\_, patti \_\_\_\_\_  
 as follows :

Date.	By whom paid (description).	Nature of tenant's holding.	Kist and year.	Whether on account of rent or of <i>sayar</i> .	Whether in full or in part payment.	Amount received.	Rs. a. p.

\_\_\_\_\_  
 Signature of landholder or agent.

NOTE—Under section 133 of the United Provinces Tenancy Act, separate receipts must be issued for each payment of rent or of *sayar*.

## RECEIPT.

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_  
 Receipt No. \_\_\_\_\_  
 Name of landholder \_\_\_\_\_  
 Received from tenant (name and father's name) \_\_\_\_\_  
 of village \_\_\_\_\_, mahal \_\_\_\_\_, patti \_\_\_\_\_  
 as follows :

Date.	By whom paid (description).	Nature of tenant's holding.	Kist and year.	Whether on account of rent or of <i>sayar</i> .	Whether in full or in part payment.	Amount received.	Rs. a. p.

\_\_\_\_\_  
 Signature of landholder or agent.

NOTE—Under section 133 of the United Provinces Tenancy Act, separate receipts must be issued for each payment of rent or of *sayar*.

## THE SIXTH SCHEDULE.

(See section 123).

## PROVISION FOR THE GRANTING OF RELIEF IN AGRICULTURAL CALAMITIES

## I. In this Schedule—

(1) "harvest" means the *kharij* or *rabi* harvest ;(2) "holding" does not include the holding of an under-proprietor, permanent lessee, permanent tenure-holder, or *thekadar* ;(3) "*khudkasht*" includes land cultivated by a permanent lessee or *thekadar* as such either by himself with his own stock or by servants or by hired labour ;

(4) "landlord" does not include a person with whom a sub-settlement has been made under the provisions of section 76 of the United Provinces Land Revenue Act, 1901, or with whom a settlement has been made under the provisions of section 77 of that Act ;

(5) "relief in rent or revenue" means the remission or suspension of such rent or revenue and "relief in rental" means the sum of the relief in rent and of the nominal relief in valuation in a *mahal* or portion of a *mahal* ;

(6) "rent" means the amount of rent payable in respect of the harvest affected by the calamity and includes the amount payable by an under-proprietor as defined below ;

(7) "rental" of a *mahal* or portion of a *mahal* means the sum of the fixed cash rents of such *mahal* or portion payable to the landlord and of the valuation of the *sir* and *khudkasht* of such landlord and of holdings, the rent of which is payable by division of the produce or based on an estimate or appraisement of the standing crops as appertaining to the area normally sown in the harvest in which the calamity occurred ;

(8) "under-proprietor" includes an inferior proprietor with whom a sub-settlement has been made in accordance with the provisions of section 76 of the United Provinces Land Revenue Act, 1901, or with whom a settlement has been made under the provisions of section 77 of that Act ;

(9) "valuation" means valuation in accordance with the provisions of paragraph 4.

2. (1) Relief in rent of a holding shall ordinarily be given in accordance with the following scale :

Loss measured in annas per rupee of normal produce	Relief in rent per rupee.
Amounting to 8 annas but not amounting to 10 annas	6 annas.
Amounting to 10 annas but not amounting to 12 annas	10 annas.
Amounting to and exceeding 12 annas	16 annas.

Provided that in Bundelkhand and in the trans-Jumna parts of the Allahabad, Etawah, Agra and Muttra districts and in other areas if justified by the circumstances of the cultivators, suspension or remission

to the extent of 4 annas in the rupee may be given when the loss measured in annas per rupee of the normal produce amounts to 6 annas but does not amount to 8 annas.

(2) When the whole or a part of a holding is sublet, relief shall be given to the sub-tenant in accordance with the scale applied to such holding, and shall be separate from, and independent of, the relief given to his landholder which shall be calculated as if no part of the holding were sublet.

(3) Nominal relief in valuation of *sir* or *khudkasht* and of holdings the rent of which is paid by division of the produce or by an estimate or appraisement of the standing crops, shall be given on the same scale as the relief in rent.

(4) If the whole or a portion of *sir* is let to a tenant, relief shall be given to such tenant in accordance with the scale applied to such *sir* and shall be separate from, and independent of, the nominal relief in valuation given to the *sir*-holder which shall be calculated as if no part of such *sir* were let.

3. The relief in rent payable by under-proprietor, permanent lessee, permanent tenure-holder or *thekadar* shall be calculated in accordance with the provisions of paragraph 2 and paragraph 4 as if the rent payable by such under-proprietor, permanent lessee, permanent tenure-holder or *thekadar* were revenue and as if the rent payable to such under-proprietor, permanent lessee, permanent tenure-holder or *thekadar* were payable to the landlord and as if the *sir* or *khudkasht* of such under-proprietor, permanent lessee, permanent tenure-holder or *thekadar* were the *sir* or *khudkasht* of the landlord.

4 The valuation of *sir* and *khudkasht* and of holdings the rent of which is payable in kind or by an estimate or appraisement of the crop shall be made in accordance with the sanctioned rates applicable to occupancy tenants :

Provided that if special rates are sanctioned for the commutation of rents in kind, such rates shall be used for the valuation of such holdings ;

Provided further that the Collector may order that the valuation may be at the average rate of rent payable by hereditary tenants for land in the village, less two annas in the rupee or at the average rate paid by occupancy tenants for such land :

Provided also that holdings the rent of which is payable by division of the produce or by an estimate or appraisement of the crops may be valued at the average rate payable for such holdings in the recent normal year.

5. In any *mahal* or portion of a *mahal* in which relief is given in rental, the relief to be given in revenue shall be of the same kind as the relief in rental and shall bear the same proportion to the revenue of such *mahal* or of such portion as the relief given in rental bears to the rental of such *mahal* or such portion.

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## APPENDIX A.

Rules framed by the Provincial Government in exercise of powers conferred by section 292 of the Act.

### The United Provinces Tenancy (Government) Rules, 1940.<sup>1</sup>

Short title and commencement.

1. (a) These rules may be called the United Provinces Tenancy (Government) Rules, 1940.

(b) They shall come into force on the date of their publication in the official *Gazette*.

2 In these rules, unless there is something repugnant in the subject or context—

“the Act” means the United Provinces Tenancy Act, 1939.

### Rules to give effect to the Provisions of section 57 of the Act.

3 The following procedure shall be observed for the attestation, under section 57 of the Act, of leases, counterparts, grants or agreements required to be made by registered instrument when such leases, counterparts, grants or agreements—

(a) relate to land held by a grove-holder as such, or to land let or granted for the purpose of planting a grove, or

(b) relate to a tenancy and stipulate for rent not exceeding one hundred rupees annually.

4. Every revenue court, and every revenue officer, not inferior in rank to a supervisor qanungo, within the local limits of whose jurisdiction the whole or some portion of the land to which such lease, counterpart, grant or agreement relates is situate, shall have authority to attest such document.

5. The endorsement required by sub-section (2) of section 57 of the Act shall be as nearly as may be in the following form :

This document was presented before me on the.....day of .....in the year.....by the person/persons specified below. I have satisfied myself as to his/their identity and his/their acquaintance with and assent to the terms of the document.

Execution is admitted by A. B.....  
son of.....  
caste.....  
profession.....  
resident of.....  
and C. D.....  
son of.....  
caste.....  
profession.....  
resident of.....  
who is/are personally known to me

<sup>1</sup> These rules were published in the U. P. Gazette, dated 13th April, 1940 in Part 1-A, pages 223-227.

Or

who is/are identified by C. D.....

son of.....

caste.....

profession.....

resident of.....

and E. F.....

son of.....

caste.....

profession.....

resident of.....

who is/are personally known to me

Or

who is/are identified by C. D.....

son of.....

caste.....

profession.....

resident of.....

who is/are of apparent respectability.

Date of attestation,	Signature of the executant or executants.	Signature or thumb-empresion of the witnesses.	Signature of the attesting officer or court.

6. Every document to be attested shall be presented in person by the executant himself or by his agent, representative or assign, duly authorized by power of attorney executed before and authenticated by a Registrar or Sub-Registrar in British India.

7. If the attestation is done by the supervisor qanungo, he shall note in his register of agreements the date of presentation of the document, the nature of the document, and the name and address of the executant, and shall note the fact of attestation in his diary. If he is not satisfied as to the identity of the executant or his acquaintance with and assent to the terms of the document, or if execution is not admitted by him, he shall refuse to attest it, and shall enter in his diary the date of presentation, the nature of the document, the name and address of the executant, and the reason for his refusal.

8. No lease, counterpart, grant or agreement shall be attested unless it is presented for attestation within four months from the date of its execution :

Provided that where a document has been executed by more than one person on different dates, for the purpose of this rule, it shall be deemed to have been executed when the last executant signed it.





**11.** In other respects, the rules applicable to saleable forms  
 Rules regarding issues. regarding issues, indents, security, check, etc., shall  
 etc., apply also to books of receipts :

Provided that if the District Officer thinks that the security taken  
 under those rules from the official in charge of sale arrangements is  
 inadequate he may increase the amount.

**Rules to give effect to the provisions of section 142 of  
 the Act.<sup>1</sup>**

**12.** The officer deputed under section 142 of the Act to make the  
 Qurq Amin to make division, estimate, or appraisal shall ordinarily  
 division, estimate or be *Qurq Amin*.  
 appraisal of crop.

**13.** With every application a fixed fee of Re. 1 shall be deposited  
 Fees. by the applicant.

**Rules to give effect to the provisions of section 182 of the Act.**

**14.** (See page 569 *supra*.)

**Rules to give effect to the provisions of section 229 of the Act**

**15.** (See page 686 *supra*.)

**Rules to give effect to sections 286-288 of the Act.**

**16-20.** (See pages 859-860).

**21-25.** (See pages 866-867.)

The Provincial Government has made further rules<sup>2</sup> making the  
 provisions of Chapter XXIII of the Revenue Court Manual relating to  
 fees payable for services of officials deputed for settlement of private  
 boundary disputes applicable to demarcation proceedings taken under  
 any of the provisions of this Act or of the Rules made under this Act.

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<sup>1</sup> These rules will supersede the rules made under the repealed Act, given on pages  
 435-436 *ante* for comparative reference.

<sup>2</sup> Published in the U. P. Gazette dated 22nd June, 1940, Part 1-A, p. 333.

## APPENDIX B.

Rules framed by the Board of Revenue in exercise of the powers conferred by section 293 of the Act.

**The United Provinces Tenancy (Board of Revenue Rules, 1940.<sup>1</sup>**

## CHAPTER I.

## PRELIMINARY.

**I. (1)** These rules may be called the United Provinces Tenancy (Board of Revenue) Rules, 1940.

Short title and commencement.

(2) They shall come into force on the date of publication in the official *Gazette*.

**2.** In these rules, unless there is anything repugnant in the subject or context, "Act" means the United Provinces Tenancy Act, 1939 (XVII of 1939).

Definition.

## CHAPTER II.

## Rules under section 12 of the Act.

*Hereditary rights of certain heirs of sir-holders.*

**3.** Before demarcating the area in which hereditary rights have accrued under the provisions of section 12 of the Act, the assistant collector in charge of the sub-division shall first value each plot comprised in the *sir* in question by multiplying its area by the rates sanctioned for hereditary tenants under the provisions of Chapter VI of the Act for that local area. If no such rates have been sanctioned for the local area, the assistant collector shall determine appropriate rates in the manner laid down in section 103 of the Act.

Valuation of *sir*.

**4.** The valuation of the areas demarcated as hereditary tenancy under the provisions of section 12 of the Act shall be proportionate to the shares which the persons in whose favour the demarcation is made would have acquired in the proprietary rights of the deceased, had such rights devolved in accordance with the personal law to which the deceased was subject.

Demarcation of hereditary areas.

**5.** In making a demarcation under the preceding rule, compactness shall be the chief consideration :

Compactness.

Provided that, as far as possible, no party shall be given all the inferior or all the superior land, and that as far as possible the existing fields are not sub-divided.

<sup>1</sup> These rules were published in the U. P. Gazette, dated 18th July, 1940 in Part 1-A., pages 411-430

6 The rent of each area so demarcated as hereditary tenancy shall be determined in accordance with the provisions of clause (c) of sub-section (1) of section 101 or of section 103 of the Act, as the case may be.

Determination of rent.

7. The assistant collector shall prepare and place on the record of the case a map showing in different colours the area allotted to each party, and if fields are sub-divided, he shall have the boundaries demarcated on the spot at the expense of the parties, who will bear the cost in proportion to their interest in the *sir*.

Demarcation of sub-divided fields.

### CHAPTER III.

#### Rules under sections 15, 16 and 18 of the Act.

##### *Demarcation of sir.*

8. Subject to the provisions of section 19 of the Act, action under section 15 or section 16 of the Act will not ordinarily be taken except on an application from *sir*-holder or a tenant of *sir*.

Proceedings ordinarily to be taken on application.

9. For the purpose of these rules, *sir*-holders may be divided into two classes, A and B. *Sir*-holders of Class A are those to whom the first proviso to clause (a) of section 6 of the Act applies, *Sir*-holders of Class B are those to whom that proviso does not apply.

Classes of *sir*-holders.

NOTE 1—Land of *sir*-holders of Class A in which *sir* rights were acquired under the provisions of clause (d) or (e) of section 4 of the Agra Tenancy Act, 1926, or of clause (c) or (d) of section 3 of the Oudh Rent Act, 1886, ceases to be *sir*, subject to the provisions of sub-clauses (i) and (ii) of the first proviso and of the third proviso to section 6 of the Act.

NOTE 2—Land of *sir*-holders of Class A in which *sir* rights were acquired before the coming into force of the Agra Tenancy Act, 1926, or the Oudh Rent (Amendment) Act, 1921, as the case may be, continues to be *sir*, subject to a maximum of 50 acres for each *sir*-holder and to certain restrictions regarding the area which is let to tenants, as further explained in the following rules.

NOTE 3—All the *sir* of *sir*-holders of Class B continues to be *sir*, irrespective of when the *sir* rights therein were acquired and of whether part or all of it is let to tenants.

10. (1) In order to decide whether a *sir*-holder belongs to Class A, or Class B, the assistant collector in charge of the sub-division shall, having regard to the provisions of the second and third provisos and the explanation to section 6 and to the provisions of section 7 of the Act, determine the amount of local rate, if any, to which the *sir*-holder should be deemed to have been assessed on 1st January, 1940, in respect of all the land which he holds as proprietor in the United Provinces.

Determination of the class of *sir*-holders.

*Examples—(a)* If the land revenue to which a *sir*-holder is assessed was Rs. 100, and has been reduced by remissions for the fall in prices to Rs. 80, then if the local rate is Rs. 10, it will be deemed for the purposes of these rules to be Rs. 8,

(b) A local rate of Rs. 60 is assessed in respect of land belonging to a joint Hindu family. If the family consists of three brothers, then such brother will, for the purposes of these rules, be deemed to be assessed to a local rate of Rs. 20. If, however, the family consists of a father and three sons, then the sons, for the purposes of these rules, will not be deemed to be *sir*-holders and the father will be deemed to be assessed to a local rate of Rs. 60.

(c) A and B were two brothers, holding land which is assessed to a local rate of Rs. 80. A dies leaving two sons C and D, while B has two sons E and F. B, C, D, E and F then form a joint Hindu family. C and D will for the purposes of these rules be deemed to be assessed to a local rate of Rs. 20 each, and B to a local rate of Rs. 40, while E and F will not be deemed to be *sir*-holders.

(2) If according to sub-rule (1), a *sir*-holder is deemed to be assessed to a local rate exceeding Rs. 25 on 1st January, 1940, then he belongs to Class A.

(3) (a) If according to sub-rule (1), a *sir*-holder is deemed to be assessed on 1st January, 1940, to a local rate not exceeding Rs. 25, then the assistant collector shall determine the local rate payable by the *sir*-holder or his predecessor-in-interest on 30th June, 1938. If this also does not exceed Rs. 25, then the *sir*-holder belongs to Class B.

(b) If, however, the local rate payable on 30th June, 1938, exceeds Rs. 25, then the *sir*-holder belongs to Class A, unless—

(i) the reduction in local rate between 30th June, 1938, and 1st January, 1940, is due to a reduction of land revenue at re-settlement or revision of settlement, or

(ii) the *sir*-holder acquired his proprietary rights after 30th June, 1938, by inheritance or survivorship.

*Example.*—A *sir*-holder assessed to a local rate of Rs. 60 died between 30th June, 1938 and 1st January, 1940. Each of his three sons then has a one-third share in the property, and each belongs to Class B, although the local rate payable by their predecessor-in-interest exceeded Rs. 25 on 30th June, 1938.

11. Section 15 of the Act relates to *sir* which is jointly held by *sir*-holders of Classes A and B, and which would cease to be *sir* under the provisions of section 6 of the Act if all the *sir*-holders belonged to Class A. In accordance with the third proviso to clause (a) of section 6 of the Act, such *sir* will remain *sir* until demarcation is made. Such holdings will be demarcated in accordance with the following rules.

12. (1) An application under section 15 of the Act shall be accompanied by the following documents—  
Documents to accompany an application under section 15.

(a) A certified copy of the *khatauni khata*s of *sir*,

(i) which was not *sir* before the commencement of the Agra Tenancy Act, 1926 (III of 1926), or the Oudh

Rent (Amendment) Act, 1921 (IV of 1921), as the case may be,

- (ii) which is jointly held by *sir*-holders, not all of whom belong to Class A ; and
- (iii) which was not received in exchange in the circumstances mentioned in the first proviso to section 6 of the Act ;
- (b) a certified copy of the *khewat* to which such *sir* pertains ;
- (c) a certified copy of the *khatauni khata*s of tenants of such *sir* ;
- (d) a list giving the amounts of local rate to which each holder of such joint *sir* is assessed ; and
- (e) in the case of *sir* of a joint Hindu family, a genealogical table, and a list showing the share of each living member of the family having an interest in such *sir*, and the share of local rate for which each member would be liable on rateable distribution.

(2) An application presented under this rule shall not be rejected merely on the ground that any of the particulars to be shown in the lists specified in clauses (d) and (e) of sub-rule (1) are lacking, unless the applicant after being allowed a reasonable time, not ordinarily exceeding one month, fails to make good the deficiency.

13. If an assistant collector initiates proceedings under section 15 of the Act, he shall issue a notice in Form A, to all the joint *sir*-holders and to all the tenants of *sir* and shall call upon them to furnish the particulars specified in clauses (d) and (e) of sub-rule (1) of rule 12, and shall then proceed in accordance with the following rules.

14. (1) In proceedings under section 15 of the Act, all the joint *sir*-holders and tenants of *sir* shall be made parties.

If the assistant collector finds that any such person is not a party to the application, or in the case of proceedings initiated by the assistant collector, notice has not been issued to any such person, the assistant collector shall implead him as a party and shall issue notice to him in Form A or B, as the case may be, and if he appears, shall call upon him to admit or deny the accuracy of the lists specified in clauses (d) and (e) of sub-rule (1) of rule 12, filed by the applicant, if any, or by other party, and if any party does not accept any of the entries therein, to produce his own lists, if he so desires.

(2) Any person so impleaded may be allowed, if he so desires, to join in the original application, if any.

(3) Where proceedings are started on an application, every party not joining in the application shall be supplied with a copy of the lists specified in clauses (d) and (e) of sub-rule (1) of rule 12, to be furnished by the applicant.

**15.** If any party to the proceedings objects to the correctness of the entries in the certified copies or in the lists specified in clause (d) or (e) of sub-rule (1) of rule 12, the assistant collector shall proceed to decide such objection before making the demarcation.

**16.** (1) Before demarcating *sir* under the provisions of section 15 of the Act, the assistant collector shall first value each plot comprised in the *sir*-land in question by multiplying its area by the rates sanctioned for that local area for hereditary tenants, under the provisions of Chapter VI of the Act. If no such rates have been sanctioned for the local area, the assistant collector shall determine the appropriate rates in the manner laid down in section 103 of the Act.

(2) The valuation of the *sir* demarcated and declared to have ceased to be *sir* shall be proportionate to the interest of the *sir*-holders of Class A in the joint holding.

**17.** When the *sir* of a proprietor of Class A, which ceases to be *sir* in accordance with the provisions of section 6 or section 15 of the Act, has been demarcated in accordance with the provisions of those sections, then the remaining *sir* land, if any, of the proprietor, will be dealt with in accordance with section 16 of the Act.

**18.** An application under section 16 of the Act, shall be accompanied by the following documents :

- (i) a certified copy of the *khatauni khatas* of *sir* of the *sir*-holder, whether such *khatas* are held by *sir*-holders all of whom belong to Class A or are held jointly by *sir*-holders belonging to both Classes A and B ;
- (ii) a certified copy of the *khewat* to which such *sir* pertains ;
- (iii) a certified copy of the *khatauni khatas* of tenants of such *sir*, showing the areas held and the rents paid by them ;
- (iv) a statement showing the local rate to which the *sir*-holder, or, if the *sir* is joint, each *sir*-holder is assessed ;
- (v) in the case of *sir* of a joint Hindu family, a genealogical table and a list, showing the share of each living member of such family having an interest in such *sir*, and the share of local rate for which each such member would be liable on rateable distribution ;
- (vi) a list of *khudkashi* land, whether joint or not, held by each *sir*-holder of Class A ; and
- (vii) where the *sir*-holder belongs to any class of persons to whom section 17 of the Act applies, the class to which he belongs.

Procedure when proceedings are initiated by an assistant collector.

19. If an assistant collector initiates proceedings under section 16 of the Act, he shall issue notice in Form A to the persons concerned and shall call upon them to furnish the particulars specified in clauses (iv) to (vii) of rule 18.

Procedure in proceedings under section 16.

20. The procedure laid down in rules 14 and 15 shall apply *mutatis mutandis* to proceedings under section 16 of the Act.

Principles to be observed.

21. *Sir* to which the provisions of section 16 apply shall be demarcated in accordance with the following principles :

(1) If a proprietor belonging to Class A still retains 50 acres or more of *sir* which is not let, the tenants of his *sir* which is let will be declared hereditary tenants, and the remainder of the *sir*, whatever its area, will remain *sir*.

*Example.*—A proprietor of Class A retains 100 acres of *sir*, of which 30 acres are let. The tenants of 30 acres will become hereditary tenants and 70 acres will remain the *sir* of the proprietor.

(2) If a proprietor of Class A still retains more than 50 acres of *sir*, of which less than 50 acres is not let then an area of 50 acres will be demarcated as *sir*, first from his *sir* which is not let, secondly from his *khudkasht*, if any, and lastly from *sir* which is let.

*Example 1.*—A proprietor of Class A still retains 60 acres of *sir*, of which 20 acres are let, and 30 acres of *khudkasht*. Of the original 60 acres of *sir*, the tenants of 20 acres will become hereditary tenants, and the remaining 40 acres will remain *sir*. Of the 30 acres of *khudkasht*, 10 acres will be demarcated as *sir* and the remaining 20 acres will remain *khudkasht*.

*Example 2.*—A proprietor of Class A still retains 60 acres of *sir* of which 40 acres are let, and 20 acres of *khudkasht*. An area of 50 acres will be demarcated as *sir* as follows : first 20 acres of *sir* which is not let, secondly 20 acres of *khudkasht*, and lastly 10 acres out of the 40 acres of *sir* which is let to tenants. The tenants of the remaining 30 acres of *sir* will become hereditary tenants while the tenants of 10 acres demarcated as *sir* will not.

(3) If a proprietor of Class A still retains less than 50 acres of *sir*, including *sir* which is let, and has *khudkasht* also so that the total area of *sir* and *khudkasht* exceeds 50 acres, then an area equal to the total area of *sir* will be demarcated as *sir*, first from *sir* which is not let, secondly from *khudkasht*, and lastly from *sir* which is let.

*Example 1.*—A proprietor of class A still retains 40 acres of *sir* of which 20 acres are let, and 30 acres of *khudkasht*. Of the original 40 acres of *sir*, the tenants of 20 acres will become hereditary tenants, and the remaining 20 acres will remain *sir*. Of the 30 acres of *khudkasht*, 20 acres will be demarcated as *sir* (making 40 acres in all) and the remaining 10 areas will remain *khudkasht*.

*Example 2.*—A proprietor of Class A still retains 40 acres of *sir* of which 35 acres are let, and 20 acres of *khudkasht*. An area of 40 acres will be demarcated as *sir* as follows: first 5 acres of *sir* which is not let, secondly 20 acres of *khudkasht*, and lastly 15 acres out of the 35 acres of *sir* which is let. The tenants of the remaining 10 acres of *sir* which is let will become hereditary tenants, while the tenants of 15 acres demarcated as *sir* will not.

(4) If the total area of *sir* retained by a proprietor of Class A and of *khudkasht* held by him does not exceed 50 acres, then the whole of his *sir*, including the area, if any, let to tenants, will remain *sir*.

*Example.*—A proprietor of Class A retains 20 acres of *sir* of which 10 acres are let, and 20 acres of *khudkasht*. The whole of the 20 acres of *sir* will remain *sir* and the tenants of 10 acres will not become hereditary tenants.

(5) The tenants of land which is not demarcated as *sir* in accordance with this rule will be declared hereditary tenants.

(6) Where a portion of *khudkasht* or of *sir* which is let to tenants is demarcated as *sir* under this rule the demarcation shall be made in accordance with the reasonable wishes of the *sir*-holder.

(7) In calculating the area under this rule, the provisions of sub-section (7) of section 16 of the Act shall be followed where applicable.

*Example.*—A proprietor of Class A in Bundelkhand retains 150 acres of *sir*, of which 70 acres are let, and 10 acres of *khudkasht*. An area of 100 acres will be demarcated as *sir* as follows: first 80 acres of *sir* which is not let, secondly 10 acres of *khudkasht*, and lastly 10 acres of *sir* which is let to tenants. The tenants of the remaining 60 acres of *sir* will become hereditary tenants, while the tenants of 10 acres demarcated as *sir* will not.

(8) *Sir* which, according to the provisions of section 17 of the Act, is deemed not to be let shall for the purposes of this rule be treated as *sir* which is not let.

(9) Land which ceases to be *sir* in accordance with the provisions of section 6 or section 15 of the Act and becomes *khudkasht* of the proprietor, may again be demarcated as *sir* under section 16 of the Act.

**22.** (1) If, in the course of proceedings under section 16 of the Act, it appears—  
Demarcation of joint *sir* or *khudkasht*.

(a) that the proprietor is in possession of a joint holding of *sir* which has not been demarcated in accordance with the provisions of section 15 of the Act, or

(b) the proprietor is in possession of a joint holding of *khudkasht*, which it is necessary to divide off for the purpose of demarcating the *khudkasht*, or part of it, as *sir*;



then in accordance with the provisions of section 18 of the Act, the assistant collector shall proceed to demarcate such joint holding of *sir* in accordance with section 15 of the Act and to divide off the proprietor's share in the joint *khudkasht*.

(2) The rules relating to the demarcation of *sir* will, in so far as they are applicable, apply also to proceedings for dividing up a joint holding of *khudkasht*.

(3) Before demarcating *sir* under the provisions of section 18 of the Act, the assistant collector shall first value each plot of the *sir* by multiplying its area by the rates sanctioned for that local area for hereditary tenants under the provisions of Chapter VI of the Act. If no such rates have been sanctioned for the area, the assistant collector shall determine the appropriate rates in the manner laid down in section 103 of the Act.

(4) In making such demarcation the following principles shall be observed :

(a) The valuation of the *sir* allotted to a *sir*-holder shall be proportionate to his proprietary interest in such *sir*.

(b) *Sir* which is in the separate possession of a co-sharer shall, as far as possible, be allotted to him, if it is not in excess of his share.

(c) Where *sir* is situated in more than one village, each *sir*-holder shall, as far as possible, be given his share from *sir* situated in the village in which he resides.

(d) The *sir* of each *sir*-holder shall be as compact as possible.

23. In fixing the rent of a part of a holding declared to be hereditary tenancy, and of the remainder, under the provisions of sub-section (2) of section 15 and of sub-section (5) of section 16 of the Act, the assistant collector shall apportion the total rent previously payable by the tenant in proportion to the valuation of each portion at the rates sanctioned for that local area for hereditary tenants. If no such rates have been sanctioned, he shall proceed to determine rates in accordance with the provisions of section 103 of the Act.

24. (1) *Sir* which is not let, and which ceases to be *sir* under the provisions of section 6 of the Act by reason of being demarcated under the provisions of section 15 or 16 of the Act, shall become the *khudkasht* of the proprietor.

(2) The tenants of *sir* which is let, and which ceases to be *sir* under the provisions of section 6 of the Act, or by reason of being demarcated under the provisions of section 15 or 16 of the Act, shall become hereditary tenants of the *sir* held by them which so ceases to be *sir*.

(3) When ordering demarcation of *sir* under the provisions of section 15 or 16 of the Act, the assistant collector shall at the same time determine, in accordance with the provisions of rule 23, the rent of

any hereditary holding which may have been created, and shall specify the corrections to be made in the annual records in respect of such holdings and in respect of the *sir* which has become *khudkasht*.

(4) The record of proceedings for the demarcation of *sir* under the provisions of section 15 or 16 of the Act shall not be deposited in the record room until the tahsildar has certified that the corrections ordered in sub-rule (3) have been duly made. The tahsildar's certificate shall be filed with the record of the proceedings.

*Example.*—A joint holding of 10 acres of *sir* which would cease to be *sir* if both the *sir*-holders belonged to Class A is held by two proprietors, one of whom belongs to Class A and the other to Class B, their proprietary share in the *sir* being as 4:1. Assuming that the holding consists of land of the same quality, then A will be entitled to 8 acres and B to 2 acres. If the whole or any part of the 8 acres allotted to A is let, then the tenants will get hereditary rights therein, and the area which is not let will become the *khudkasht* of the proprietor. The area which is allotted to B will remain *sir*, and the tenants thereof, if any, will not acquire hereditary rights.

25. The assistant collector shall prepare and place on the record a map showing in different colours the plots demarcated by him as *sir*, and those in which hereditary rights have been declared, and if any field has been sub-divided, he shall demarcate the portions at the expense of the tenant.

Preparation of map  
and demarcation of  
sub-divided fields.

### FORM A.

[See rule 14(1)].

IN THE COURT OF \_\_\_\_\_ DISTRICT.

CASE No \_\_\_\_\_ OF \_\_\_\_\_ 19 .

In the matter of the demarcation of <sup>*sir*</sup>\_\_\_\_\_ <sub>*khudkasht*</sub> situated in mahal \_\_\_\_\_  
village \_\_\_\_\_ pargana \_\_\_\_\_ tahsil \_\_\_\_\_  
district \_\_\_\_\_ notice to \_\_\_\_\_ son of  
\_\_\_\_\_ caste \_\_\_\_\_ resident of village \_\_\_\_\_  
\_\_\_\_\_ pargana \_\_\_\_\_ tahsil \_\_\_\_\_ district  
\_\_\_\_\_ .

Whereas the Court has taken proceedings under <sup>section 15</sup> \_\_\_\_\_  
<sup>section 16</sup> \_\_\_\_\_  
section 16 read with  
section 18

of the United Provinces Tenancy Act, 1939, for the demarcation of <sup>*sir*</sup>\_\_\_\_\_ <sub>*khudkasht*</sub>, you are hereby summoned to appear in this court in person, or by pleader duly instructed and able to answer all material

questions relating to the case, or who shall be accompanied by some person able to answer all such questions on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at ten o'clock in the forenoon. A copy of the entries in the *khatauni* relating to the said sir and the tenants thereof *khudkasht* is attached hereto. If you do not admit them to be correct you are directed to produce on that day all the documents on which you intend to rely in support of your case.

Take notice that in default of your appearance on the day aforesaid, the case will be heard and determined in your absence.

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Seal of the Court.
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Assistant Collector.

FORM B.

[See rule 14(1)].

IN THE COURT OF \_\_\_\_\_ DISTRICT.

CASE No. \_\_\_\_\_ OF \_\_\_\_\_ 19\_\_\_\_.

... Applicant,

versus

... Opposite party.

Whereas the applicant abovementioned has made an application for emarcation of *sir* under section 15 of the United Provinces Tenancy Act, 1939, you are hereby summoned to appear in this court in person, or by a pleader duly instructed and able to answer all material questions relating to the case, or who shall be accompanied by some person able to answer all such questions on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at ten o'clock in the forenoon. A copy of the said application is attached, and if you do not admit the particulars therein to be correct, you are directed to produce on that day all the documents on which you intend to rely in support of your case.

Take notice that in default of your appearance on the day aforesaid, the case will be heard and determined in your absence.

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Seal of Court.
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Assistant Collector.

## CHAPTER IV.

### Rules under section 49 of the Act.

#### *Division of holdings.*

26. Before making a division of a holding, the Assistant Collector shall value each plot comprised in the holding by multiplying its area by the rates sanctioned for that local area for hereditary tenants under the provisions of Chapter VI of the Act. If no such rates have been sanctioned for the area, the Assistant Collector shall determine appropriate rates in the manner laid down in section 103 of the Act.

27. In dividing a holding into two or more portions the following Principles to be observed :

- (a) The valuation of the portion allotted to each party shall be proportionate to his share in the holding.
- (b) The portion allotted to each party shall be as compact as possible.
- (c) As far as possible no party shall be given all the inferior or all the superior quality of land.
- (d) As far as possible existing fields shall not be split up.
- (e) Plots which are in the separate possession of a tenant shall, as far as possible, be allotted to that tenant, if they are not in excess of his share.
- (f) Any reasonable objection which may be raised by the landholder shall be considered and decided.

28. The Assistant Collector shall prepare and place on the record a map showing in different colours the plots given to each party, and if any field has been sub-divided he shall demarcate the portions at the expense of the parties.

Preparation of map  
and demarcation of  
sub-divided fields.

## CHAPTER V.

### Rules under section 53 of the Act.

#### *Exchange of land.*

29. An application under section 53 of the Act shall contain the following particulars :

Documents to accompany application.

- (i) the  *khasra*  numbers of the plots which the applicant wishes to take, and of the plots cultivated by him which he offers in exchange ;
- (ii) a certified copy of the  *khatauni khata* s in which all such plots are included ;

- (iii) a certified copy of the *khawat khata*s to which all such plots pertain ;
- (iv) the reasons for the exchange ;
- (v) a statement showing—
  - (a) that the bar prescribed by sub-section (4) of section 53 of the Act does not apply to the case ;
  - (b) details of any lease, mortgage or other encumbrance with which the land offered in exchange by the applicant may be burdened, together with the names and addresses of the lessee, mortgagee, or other encumbrancer ;
- (vi) if the landholder is not a party to the proposed exchange, his name and address.

30. On receipt of such application, the assistant collector in charge of a sub-division shall, if he is satisfied that the application is not barred by sub-section (4) of section 53 of the Act, give to the opposite-party and to the landholder, and, where the provisions of sub-section (6) of section 53 of the Act apply, to the lessee, mortgagee or other encumbrancer, an opportunity to show cause why the exchange should not be ordered. Every such notice shall be accompanied by a copy of the application which shall be filed by the applicant.

31. (1) The assistant collector shall hear and decide objections, if any, and may make such further inquiry as he considers necessary, and shall reject the application if he is not satisfied that reasonable grounds exist for ordering the exchange.

(2) If the assistant collector is satisfied that the application is not barred by sub-section (4) of section 53 of the Act, and that reasonable grounds exist for ordering the exchange he shall value the land to be exchanged by multiplying the area of each plot by the rates sanctioned for that local area for hereditary tenants under the provisions of Chapter VI of the Act. If no rent rates have been sanctioned for the area in which the lands to be exchanged are situated, he shall determine the appropriate rates in the manner provided by section 103 of the Act. After considering the valuation, and where sub-section (6) of section 53 of the Act applies, the terms and incidents of the lease, mortgage or other encumbrance, the assistant collector shall grant the application either in whole or in part.

32 If, in the course of proceedings under section 53 of the Act, a portion only of a holding is allotted in exchange, the assistant collector shall apportion the rent payable in respect of such holding between such portion and the remainder of the holding.

Principles to be observed in ordering exchange. 33. In ordering an exchange, the assistant collector shall observe the following principles—

- (a) That the land which the applicant receives is, as near as may be, equal in value to the land which he gives in exchange.

- (b) An existing field shall not be sub-divided.
  - (c) If there is a work of improvement on any land sought to be exchanged, he may refuse to order the exchange unless the parties come to an agreement regarding the amount of compensation to be paid for such improvement and such compensation is actually paid.
  - (d) That, as far as possible, the interests of the lessee, mortgagee, or other encumbrancer, if any, in respect of land to be exchanged are not prejudiced.
  - (e) Where the provisions of sub-section (6) of section 53 of the Act apply, when deciding whether or not reasonable grounds exist for ordering the exchange, he shall consider whether in the event of the transfer of the lease, mortgage or other encumbrance from one area to another it is possible or not to place the parties and the lessee, mortgagee or encumbrancer, as the case may be, in a position similar to that which each had before such exchange ; and he shall in his order clearly specify the lands and the interests affected thereby.
34. If the object of the exchange is to consolidate the area which the applicant cultivates, the assistant collector shall place on the record of the case an extract of the village map showing in different colours the plots given and received in exchange by the applicant.

## CHAPTER VI.

### Rules under section 54 of the Act.

#### *Acquisition of land.*

- Documents to accompany application. 35. An application under section 54 of the Act shall contain the following particulars :
- (i) the *khassra* numbers and areas of the plots which the applicant wishes to acquire ;
  - (ii) a certified copy of the *khatauni khata*s in which all such plots are included, and whether they are situated within the limits of a municipality, cantonment or notified area ;
  - (iii) a certified copy of the *khewat khata*s to which all such plots pertain ;
  - (iv) the reasons for acquisition ;
  - (v) in case of an application under clause (b) of sub-section (1) a statement showing—
    - (a) whether the applicant already has a house, garden or grove in the village, and if so the area occupied by each ;
    - (b) the result of any application made by the applicant for exchange under the provisions of section 53.

**36.** To every such application all persons interested in the land to be acquired shall be impleaded as parties, and the applicant shall file with the application as many copies of it as there are persons so interested.

**37.** If the application complies with the provisions of rule 35, the collector shall issue notice to all persons interested in the land, and every notice shall be accompanied by a copy of the application, which shall be furnished by the applicant.

**38.** The collector shall hear and decide objections, if any, and if he is satisfied that the application should be granted, he shall calculate the amount of compensation payable to the tenant under the provisions of sub-section (3) of section 54 of the Act, and shall pass an order for the acquisition of, and the ejectment of the tenant from, the land applied for, or from such part thereof as he considers reasonable. Such order shall be conditional on payment to the tenant, within such time as the collector may direct, of compensation determined in accordance with the provisions of sub-section (3) of section 54 of the Act.

**39.** If the compensation is not paid within the time directed by the collector under rule 38, the application shall be dismissed and the tenant shall be awarded costs.

**40.** If the acquisition of a portion only of any holding is ordered, the collector shall determine the rent payable by the tenant for the remaining land. The rent so payable shall bear the same proportion to the rent previously payable for the whole holding as the valuation of the remaining land at the rates sanctioned under the provisions of Chapter VI of the Act for that local area for hereditary tenants bears to the valuation of the entire holding at those rates. If no such rates have been sanctioned for the local area, the collector shall determine the appropriate rates in the manner laid down in section 103 of the Act.

**41.** If the acquisition of a portion of a plot is ordered, the collector shall demarcate such portion at the expense of the applicant.

## CHAPTER VII.

### Rules under sections 84, 87 and 88 of the Act.<sup>1</sup>

#### *Surrender.*

**42.** (1) Every application made to the tahsildar under section 84 of the Act shall contain the name, description and place of residence of the tenant and the landholder, full particulars of the holding to be surrendered, giving the *khasra* numbers of the fields, their area and rent, and the village, *mahal*, *thok* or *patti* in which they are situated.

<sup>1</sup> Rules given at page 365 and pages 380-381 were made under the Act of 1926. They have been given there for reference. Now the present rules apply as given here.

(2) If the tenant applies to surrender a portion only of a holding, or if he is an ex-proprietary tenant, he shall mention in his application the grounds on which he claims to be entitled to make such a surrender under the provisions of section 82 of the Act.

43. The application shall be accompanied by as many duplicate  
 Notice. copies of the notice in Form U signed by the tenant,  
 as there are landholders on whom the notice is to be  
 served.

44. The cost of service of notice under section 84 of the Act  
 Cost of service of shall be paid by the tenant at the time his appli-  
 notice. cation is presented. In default, the *tahsildar* shall  
 refuse to serve the notice and shall record his  
 refusal with reasons on the back of the application.

45. Every application under section 84 of the Act shall be attested  
 Attestation of the by the tenant before the *tahsildar* and, if so re-  
 application by the quired, the tenant shall produce two witnesses  
 tenant. to identify him whose signatures, in token of iden-  
 tification, shall also be taken on the application.

*Arrangement for payment of rent.*

46. The written notice which a tenant is required to give to his  
 landholder under sub-section (1) of section 87 of  
 the Act shall be substantially as in Form D, and  
 such notice shall be given before the tenant ceases  
 to cultivate and leave the neighbourhood.

*Abandonment.*

47. The notice to be filed by the landholder in the office of the  
 Form of notice. *tahsildar* for service on the tenant under section 88  
 of the Act shall be in duplicate in Form E, and  
 the landholder shall file as many copies thereof as there are tenants  
 on whom the notice is to be served.

48. Every notice of surrender or abandonment, shall be served  
 Mode of service. on the landholder or tenant, as the case may be,  
 in the manner prescribed by sub-section (2) of  
 section 161 of the Act for the service of notice on a tenant :

Provided that in the case of a notice for abandonment, the *tahsildar*  
 may, for reasons to be recorded, direct that such notice shall be published  
 at the cost of the landholder in a newspaper circulating in the locality  
 in which the holding is situated.

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FORM C

### Notice of surrender

[See sections 82, 83 and 84 of the United Provinces Tenancy Act, 1939, and rule 43 of the United Provinces Tenancy (Board of Revenue) Rules 1940].

IN THE COURT OF THE TAHSILDAR—  
TAHSIL, —DISTRICT

CASE No. \_\_\_\_\_ OF 19\_\_\_\_\_

**AB** (add description and residence)\_\_\_\_\_ (tenant),

LET 548

*CD* (add description and residence) \_\_\_\_\_ (landholder).

**To**

(Name, description and place of residence———(landholder))

The tenant above mentioned, being a (here enter class of tenant) tenant in the village and mahal mentioned below, hereby informs you that under the provisions of section 82/83 of the United Provinces Tenancy Act, 1939, he intends to surrender his holding comprising the lands mentioned below, at the end of the current agricultural year (in case of notice under section 82) on (here enter the date when enhancement takes effect) (in case of notice under section 83).

Name of the village and mahal, thok or patti.	Khasra numbers of fields.	Area of fields.	Rent of holding.
1	2	3	4
	Total area ...	-----	

Seal of  
the Court.

Dated \_\_\_\_\_ (Signed) \_\_\_\_\_

## Tenan

## FORM D

## Notice of arrangement for payment of rent

[See section 87 (1) of the United Provinces Tenancy Act, 1939,  
and rule 46 of the United Provinces Tenancy (Board  
of Revenue) Rules, 1940.]

I \_\_\_\_\_, son of \_\_\_\_\_, caste \_\_\_\_\_, resident  
of \_\_\_\_\_, a (here enter class of tenant) tenant of the follow-  
ing lands hereby inform you, *EF*, son of *GH*, caste \_\_\_\_\_  
resident of \_\_\_\_\_, the person, from whom I hold, that during my  
absence I am leaving *L*, son of *M*, caste \_\_\_\_\_, resident  
of \_\_\_\_\_ in charge of my holding, who will be responsi-  
ble for paying the rent as it falls due.

Name of village and <i>mahal</i> , <i>thok</i> or <i>patti</i> .	<i>Khasra</i> numbers of fields.	Area of fields.	Rent of holding
1	2	3	4
	Total area ...		

Dated \_\_\_\_\_ (Signed) \_\_\_\_\_

Tenant.

## FORM E

## Notice of abandonment.

[See section 84 of the United Provinces Tenancy Act, 1939,  
and rule 47 of the United Provinces Tenancy  
(Board of Revenue) Rules 1940.]

IN THE COURT OF THE TAHSILDAR \_\_\_\_\_ TAHSIL  
\_\_\_\_\_ DISTRICT

Case No. \_\_\_\_\_ of 19 .

*AB* (add description and residence) \_\_\_\_\_ (landholder),

*versus*

*CD* (add description and residence) \_\_\_\_\_ (tenant).

To

(Name, description and place of \_\_\_\_\_ residence) \_\_\_\_\_  
tenant.)

Whereas you, a (here enter class of tenant) tenant of the holding specified below, are presumed to have abandoned it, this is to give notice under section 88 of the United Provinces Tenancy Act, 1939, that the abovenamed landholder wishes to treat the holding as abandoned and will enter on it on the expiry of fifteen days from the date of the service or of the publication of this notice.

Name of village and <i>mahal</i> , <i>thok</i> or <i>patti</i> .	Numbers of fields.	Area of fields.	Rent of holding.
1	2	3	4
		— — —	
	Total area ...		

Seal of  
the Court.

Dated \_\_\_\_\_ (signed) EF \_\_\_\_\_ landholder  
or his authorized agent.

## CHAPTER VIII

### Rules under sections 106 and 112 of the Act

#### *Rent-rates.*

49. In proposing rent-rates under the provisions of section 106 of the Act and for carrying out the provisions of sections 110 and 111 of the Act, the rent-rates officer shall, subject to the provisions of the Act, follow the rules made and instructions issued to settlement officers under the provisions of the United Provinces Land Revenue Act, 1901 (III of 1901) for the analysis of rents and the selection of rent-rates for hereditary and occupancy tenants, and shall further be guided by any instructions that may be issued from time to time by the Board relating to the circumstances of any particular area.

50. The rent-rate officer shall publish his proposals regarding rent-rates and records, made by him under sections 110 and 111 of the Act, dispose of objections thereto, and submit to the Board the proposals and records made by him after such modification, if any, as he may think fit, in the manner prescribed by or under the United Provinces Land Revenue Act, 1901 (III of 1901) for settlement officers in respect of such matters.

*Statement of accounts.*

**When tenant may demand a statement of accounts.**

Fee to accompany demand.

Landholder to furnish a statement of account.

**Statement of Account.**

[See section 135 of the United Provinces Tenancy Act, 1939, and rule 53 of the United Provinces Tenancy (Board) Rules, 1940.]

Total ...  
GRAND TOTAL...

**Seal of the Court.**

.....

## CHAPTER X.

**Rules to give effect to the Provisions of section 154 of the Act.**

**55.** In accordance with Serial 4 of Group E of Fourth Schedule of the Act, an application under section 154 of the Act for the recovery of arrears of rent or canal dues must bear court-fees as on a plaint for arrears of rent. Such court-fees will be the aggregate amount of the fees chargeable separately in respect of the amount claimed as principal and interest from each defaulter mentioned in the application.

**56.** An application to the Collector for realization of arrears of rent or canal dues as arrears of revenue under section 154 of the Act, shall not relate to an area larger than a *mahal*, nor, if the *mahal* is a *talugdari mahal* to an area larger than a village.

**57.** Each application shall be accompanied by lists in duplicate, showing in Form G appended to these rules the details specified in columns 1 to 9 of that form for every default or in the *mahal* or village against whom the applicant desires proceedings to be taken. If a defaulter is in arrears in respect of more than one holding, each such holding shall be shown separately.

**58.** The applicant shall produce along with his application one or more receipt-books printed under the provisions of section 136 of the Act, and containing a sufficient number of receipt forms and counterfoils for the use of the officer realizing the arrears.

**59.** The application shall be verified as a pleading in accordance with rule 15 of Order VI of the Code of Civil Procedure (V of 1908).

**60.** The application after presentation shall be at once formed into a file with an index and order sheet attached.

**61.** The Collector shall check the lists by examining the patwari, where the application relates to arrears of rent, and by comparing the lists with the canal *jamabandi*, where the application relates to canal dues, or by any other suitable method, and shall make such modifications in the lists as appear to be necessary. The collector shall also see that the claim on account of interest in column 7 has been correctly calculated at the rate prescribed by the Act, (one unna per rupee per annum simple interest). After checking the entries in columns 3—8 and making such alterations in them as may be necessary, the collector shall enter in column 10 the amount passed by him for realization, apart from court-fees. The collector shall then calculate what would be the proper court-fees payable on an application for the realization of the amounts entered in

column 10, against each defaulter and shall enter those amounts in column 11. The total to be realized from each defaulter should then be entered in column 12.

**62.** The Collector shall then send the lists, together with the receipt-books, to the *tahsildar*, who shall either proceed to realize the arrears himself or shall entrust the duty to another officer who shall ordinarily be a *naib-tahsildar* or *qurq amin*. The arrears shall be recovered as arrears of land revenue.

**63.** If the amount to be realised is large and it is not possible for the ordinary *tahsil* staff to collect it, the collector may appoint extra *qurq amins* to make the collection. Each *qurq amin* will be assisted by two peons. The extra staff will be paid according to the following scale.

- |                       |     |     |                    |
|-----------------------|-----|-----|--------------------|
| (1) <i>Qurq Amins</i> | ... | ... | Rs. 30 per mensem. |
| (2) Peons             | ... | ... | Rs. 10 per mensem. |

Each *qurq amin* will also receive an allowance of eight annas a month for stationery

**64.** Except where large distances have to be travelled, or where collections are more than usually difficult, each extra *qurq amin* will ordinarily be expected to collect not less than Rs. 2,000 a month.

**65.** After the extra staff has been appointed, the collector shall report to the commissioner the amount of the demand to be collected and the estimated cost of the extra staff employed. The cost should not ordinarily exceed 4 per cent. of the demand, and in no case should it exceed 5 per cent. of the demand.

**66.** The officer charged with the realization of the arrears shall maintain a cash-book in Form H appended to these rules. He shall total the amount realized from day to day under each head in column 4, and shall prepare and attach at the end of the cash-book an abstract of daily collections. He shall also enter up in column 13 of Form G against each defaulter the amount realized from time to time giving a reference to the serial number of the cash-book.

**67.** He shall give a receipt to each defaulter for the amount realized from him from the printed book or books supplied by the applicant under rule 58.

**68.** The *tahsildar* or the *naib-tahsildar* who has made collections, may, if the applicant or his authorized agent is present, hand over to him on his written receipt any sum realized by him under these rules. If the applicant or his authorized agent is not present or does not agree to take the amount realized, or if the collections are made by an officer other than a *tahsildar* or *naib-tahsildar*, the amount collected shall be deposited in the treasury as a revenue court deposit of the *tahsildar's* court payable to the applicant, and the requisite treasury *chalan* shall

be attached to the file. When the final payment to the applicant is made one of the duplicate lists in Form G filed under rule 57 will be given to him with all the columns filled in.

69. All sums not paid to the applicant under rule 68 shall be remitted forthwith to the treasury by *chalan* in duplicate, details of arrears of rent and canal dues being shown separately in the *chalan*.  
Sums not paid to applicant, how dealt with

70. Whenever any sum is paid either to the applicant or his authorized agent or deposited in court, an entry to this effect with the name of the payee and the amount shall be entered in the cash-book and initialled by the *tahsildar*.  
Payments to be entered in cash-book.

71. The *wasil-baqi-navis* shall maintain a register in Form I, in which all sums realized from time to time shall be entered. All such realizations shall be intimated to the *wasil-baqi-navis*.  
Comparison of accounts.

72. The officer making the collections shall, on his next visit to the *tahsil*, or as soon as possible, afterwards, compare the entries in his cash-book with those in the register kept by the *wasil-baqi-navis*.  
Comparison of account

73. No security is necessary when collections are made by the *tahsildar* or *naib-tahsildar*. But if a permanent *qurq amin* is employed in the realization of arrears under these rules the collector shall, if the amount of security already deposited by the *qurq amin* is less than Rs. 1,000 increase it to Rs. 1,000 or to Rs. 1,500, if necessary. When an extra *qurq amin* is appointed to make collections he shall be required to furnish a security of Rs. 1,500 or in special cases Rs. 2,000 at the discretion of the collector. The required security will be furnished in accordance with the rules in Chapter XLVII of the Revenue Manual and paragraphs 69—73 of the Financial Handbook, Volume V, Part I, in so far as they may be applicable.  
Security to be taken.

## FORM G.

(Rule 57).

Serial number.	Name and address of defaulter.	Canal dues payable.		Arrears of rent payable.		Interest due.
		Year.	Amount.	Year.	Amount.	Amount.
1	2	3	4	5	6	7

Amount claimed (apart from court-fees) total of columns 4, 6 and 7.	Amount of court-fees paid in respect of each defaulter.	Amount passed by the Collector for realization (apart from court-fees)	Court-fee payable on the amount shown in column 10.	Total amount to be realized, including court-fees. Total of columns 10 and 11.	Amount realized.	Remarks.
Amount.	Amount.	Amount.	Amount.	Amount.	Amount.	
8	9	10	11	12	13	14

NOTES—(1) Columns 1 to 9 will be filled in by the applicant.

(2) Columns 10 to 12 will be filled in by the collector.

(3) Columns 13 and 14 will be filled in by the *tahsildar*.

**FORM H (CASH-BOOK).**  
(Rule 66).

Serial number.	Name of defaulter with number in Form G.	Amount to be realised, i.e., the amount shown in column 12 of Form G.	Amount realized.	Date of realization.	Number of receipt given.	Amount still due.
1	2	3	4	5	6	7

Amount paid to the applicant or his authorized agent and date of payment		Name of payee	Amount deposited in treasury and date of deposit.		Initials of <i>tahsildar</i> .
Date	Amount.		Date.	Amount	
8	9	10	11	12	13



## FORM I.

(RULE 71).

**Register maintained by Wasil-baqi-navis.**

Serial number.	Pargana	Name of village	Name of mahal.	Total amount to be realized.	Amount realized	Date.	Amount still due.
1	2	3	4	5	6	7	8

## CHAPTER XI.

Rules to give effect to sections 163, 168, 169, 170, 175 and 176 of the Act.

Rules 74—77 with Forms (See pages 474—480 *supra*).

## CHAPTER XII.

Rules 78—80 (See pages 567—568 *supra*.)

## CHAPTER XIII.

Rules 81—87 (See pages 800-801 *supra*).

## CHAPTER XIV.

Rules 88—94 (See pages 803-804 *supra*).

## APPENDIX C.

Certain rules and instructions from the Revenue Court Manual, as corrected upto date, are given below for easy reference.

### CHAPTER I.

*Instructions for the general conduct of business in Revenue Courts.*

#### (Presentation of appeal etc.)

2. (i) Under order XLI, Civil Procedure Code, every appeal shall be presented to the court concerned or to such officer as it appoints in this behalf.

(ii) The Board of Revenue have issued the following instructions regarding the presentation of appeals, etc. meant for their court :

(a) Every appeal and application to the Board of Revenue shall, unless the Board by special order in any case otherwise direct, be presented to the Registrar of the Board's Office at Allahabad or to a Member on tour or at Naini Tal, or to the Commissioner of the division on tour or to the Head Assistant of his office.

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### CHAPTER IV.

#### Rules relating to Affidavits.

18.—Affidavits shall be entitled in the court of at (naming such court). If the affidavit be in support of, or in opposition to, an application respecting any case in the court it shall also be entitled in such case. If there be no such case, it shall be entitled in the matter of the petition of.

19.—Affidavits shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.

20.—Affidavits shall be confined strictly to such facts as the declarant is able of his own knowledge to prove. The declarant in speaking to such facts must do so directly and positively, using the words " I affirm " or " I make oath and say. "

21.—Two or more persons may join in an affidavit, each deposing separately to the facts which are within his own knowledge, such facts to be stated in separate paragraphs.

22.—Every person making an affidavit and every person referred to in an affidavit shall be described clearly, that is to say, by the statement of his full name the name of his father, his caste, or religious persuasion, his rank or degree in life, his profession, calling, occupation or trade and the true place of his residence. Every place referred to in an affidavit shall be correctly described.

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**23.**—Every person making an affidavit for use in a revenue court shall, if not personally known to the person before whom the affidavit is made, be identified to that person by some one known to him, and the person before whom the affidavit is made, shall state at the foot of the affidavit the name, address and description of the person by whom the identification was made as well as the time and place of such identification.

**24.**—No verification of a petition and no affidavit purporting to have been made by a *pardanashin* woman who has not appeared unveiled before the person before whom the verification or affidavit was made shall be used unless she has been identified in the manner already specified and unless such petition or affidavit be accompanied by an affidavit of identification of such woman made at the time by the person who identified her.

**25.**—The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if the person proposing to make such affidavit states that he has not read the affidavit or appears not to understand the contents thereof, or appears to be illiterate, the person before whom the affidavit is about to be made shall read and explain, or cause some other competent person to read and explain, in his presence, the affidavit to the person proposing to make the same and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made.

**26.**—The person before whom an affidavit is made shall certify at the foot of the affidavit the fact of the making of the affidavit before him and the time when and place where it was made, and shall for the purpose of identification mark and initial any exhibits referred to in the affidavit.

**26A.**—The Superintendents and Deputy Superintendents of Commissioners' offices and the Registrar and Sarishtedars of the Board of Revenue, United Provinces, have been appointed officers to administer oaths on behalf of Commissioners and the Board of Revenue respectively to deponents making affidavits under the Agra Tenancy Act, 1926, and the Oudh Rent Act, 1886, or the United Provinces Land Revenue Act, 1901.

The fees chargeable by the officials so appointed shall be annas eight for each affidavit verified either in the Court of the Board or the Courts of Commissioners. Such fees shall be realized in court-fee labels which should be affixed to the affidavit.

**27.**—If it be found necessary to correct any clerical error in any affidavit, such correction may be made in the presence of the person before whom the affidavit is about to be made, and before but not after, the affidavit is made. Every correction so made shall be initialled by the person before whom the affidavit is made, and shall be made in such

manner as not to render it impossible or difficult to read the original word or words, figure or figures, in respect of which the correction may have been made.

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## CHAPTER VI.

### Rules relating to execution of Decrees in Revenue Courts.

28—Civil Court Rules on the subject of sale and attachment of movable property made by the High Court of Judicature at Allahabad and the Chief Court of Oudh and reproduced in the appendix to this Manual shall apply to the maintenance and custody of live stock and other movable property attached in execution of decrees passed under the Agra Tenancy and Oudh Rent Acts respectively.

(The rules referred to above are given below.)

#### Rules framed by the High Court.

1. When an application is made for the attachment of live stock or other movable property, the decree-holder shall pay into court in cash such sum as will cover the costs of the maintenance and custody of the property for fifteen days. If within three clear days before the expiry of any such period of fifteen days the amount of such costs for such further period as the court may direct be not paid into court, the court on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

2. Live stock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment-debtor on his furnishing security, or in that of some landholder or other respectable person willing to undertake the responsibility of his custody and to produce it when required by the court.

3. If the custody of live stock cannot be provided for in the manner described in the last preceding rule, the animals attached shall be removed to the nearest pound established under the Cattle Trespass Act, 1871, and committed to the custody of the pound-keeper, who shall enter in a register—

(a) the number and description of the animals ;

(b) the day and hour on and at which they were committed to his custody ;

(c) the name of the attaching officer or his subordinate by whom they were committed to his custody ; and shall give such attaching officer or subordinate a copy of the entry.

4. For every animal committed to the custody of the pound-keeper as aforesaid a charge shall be levied as rent for the use of the pound for each fifteen or part of fifteen days during which such custody continues, according to the scale prescribed under section 12 of the Act No. 1 of 1871.

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And the sums so levied shall be sent to the treasury for credit to the municipal or district board as the case may be, under whose jurisdiction the pound is. All such sums shall be applied in the same manner as fines levied under section 12 of the said Cattle Trespass Act.

5. The pound-keeper shall take charge of, food and water, animals attached and committed as aforesaid until they are withdrawn from his custody as hereinafter provided and he shall be entitled to be paid for their maintenance at such rates as may be, from time to time, prescribed under proper authority. Such rates shall for animals specified in the section mentioned in the last preceding rule, not exceed the rates for the time being fixed under section 5 of the same Act. In any case for special reasons to be recorded in writing, the court may require payment to be made for maintenance at higher rates than those prescribed.

6. The charges herein authorized for the maintenance of live stock shall be paid to the pound-keeper by the attaching officer for the first fifteen days at the time the animals are committed to his custody, and hereafter for such further period as the court may direct, at the commencement of such period. Payments for such maintenance so made in excess of the sum due for the number of days during which the animals may be in the custody of the pound-keeper shall be refunded by him to the attaching officer.

7. Animals attached and committed as aforesaid shall not be released from custody by the pound-keeper except on the written order of the court, or of the attaching officer, or of the officer appointed to conduct the sale; the person receiving the animals on their being so released, shall sign a receipt for them in the register mentioned in rule 4.

8. For the safe custody of movable property other than live stock while under attachment, the attaching officer shall, subject to the approval by the Court make such arrangements as may be most convenient and economical.

9. With the permission of the court the attaching officer may place one or more persons in special charge of such property.

10. The fee for the services of each such person shall be payable in the manner prescribed in rule 2. It shall not be less than four annas and shall ordinarily not be more than six annas per diem. The court may at its discretion, allow a higher fee; but if it does so, it shall state in writing its reasons for allowing an exceptional rate.

11. When the services of such person are no longer required the attaching officer shall give him a certificate on the counterfoil form of the number of days he has served and of the amount due to him and on the presentation of such certificate to the court which ordered the attachment, the amount shall be paid to him in the presence of the presiding officer.

Provided that, where the amount does not exceed Rs. 5 it may be paid to the Shehna by money-order on requisition by the Amin and the presentation of the certificate may be dispensed with.

12. When in consequence of an order of attachment being withdrawn or for some other reason, the person has not been employed or has remained in charge of the property for a shorter time than that for which payment has been made in respect of his services, the fee paid shall be refunded in whole or in part, as the case may be.

13. Fees paid into court under the foregoing rules shall be entered in the register of petty Receipts and repayments.

14. When any sum levied under rule 5 is remitted to the treasury it shall be accompanied by an order in triplicate (in the form given as form 9 of the Municipal Accounts Code), of which one part will be forwarded by the treasury officials to the district or municipal board, as the case may be. A note that the same has been paid into the treasury as rent for the use of the pound, will be recorded on the extract from the pass-book.

15. The cost of preparing attached property for sale or of conveying it to the place where it is to be kept or sold, shall be payable by the decree-holder to the attaching officer. In the event of the decree-holder failing to provide the necessary funds, the attaching officer shall report his default to the court, and the court may thereupon issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

16. Nothing in these rules shall be deemed to prevent the court from issuing and serving on the judgment-debtor simultaneously the notices required by Order XXI, rules 22, 66 and 107.

### **Rules framed by the Oudh Chief Court.**

#### *Sale and attachment of movable property.*

1. (1) When an application is made for the attachment of live-stock or other movable property, the decree-holder shall pay into court or to the attaching officer in cash two rupees as a deposit. He shall pay from time to time such further sums as the court may direct for the charges of maintenance and custody.

(2) Notwithstanding anything to the contrary contained in Order XXI, rule 43, live stock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment-debtor on his furnishing security, or in that of some landholder or other respectable person willing to undertake the responsibility of its custody and to produce it when required by the court.

(3), (4), (5), (6) and (7) same as rules framed by the High Court.

(8) For the safe custody of movable property other than live-stock while under attachment, the attaching officer shall, subject to the approval by the court make such arrangements as may be most convenient and economical. For form of Supurdnama (either in the case of live-stock or of movable property other than live-stock) see Form 191.

(9) Same as the High Court rule.

(10) The fee for the services of each such person shall be payable in the manner prescribed in sub-rule (1). It shall not be less than two annas, and shall ordinarily not be more than three and a half annas per diem. The court may at its discretion allow higher fee ; but if it does so, it shall state in writing its reasons for allowing an exceptional rate.

(11) Same as the High Court rule without the proviso.

(12), (13) Same as the High Court rules

(14) When any sum levied under sub-rule (4) is remitted to the treasury it shall be accompanied by an order in triplicate (in the form given as Form No. 43-A of the Municipal Account Code) of which one part will be forwarded by the treasury officials to the district or municipal board, as the case may be. A note that the same has been paid into the Treasury as rent for the use of the pound will be recorded on the extract from the pass-book.

(15) Same as the High Court rule.

#### Instructions relating to Execution of Decrees of Revenue Courts.

1. It is the duty of revenue court to see that execution cases are not neglected or needlessly prolonged. They should be disposed of with the same care and regularity as original suits. But care should be taken that sufficient time is allowed for execution for all processes, warrants, etc., issued in execution of decrees, as abortive attempts to execute order lead only to ultimate delay.

4. A certificate in the form given below may be presented under Order XXI, rule 2(1), Act V of 1908, to the court without any formal written application. Such certificate need not be stamped. Should the certificate accompany a formal written application, such application must be stamped under Act VII of 1870, but the stamp shall not be charged as costs against the judgment-debtor. The form of certificate shall be as follows :

IN THE COURT OF THE

OF

*Plaintiff.*

*versus*

*Defendant.*

SUIT NO.

OF 19 .

*Certificate by decree-holder under Order XXI, rule 2(1) of the Act  
V of 1908.*

I, \_\_\_\_\_ decree-holder, certify to the court payment or  
adjustment in the following terms of the amount of Rs. \_\_\_\_\_ in the  
above suit by \_\_\_\_\_ on the

*Decree-holder.*

*Date* \_\_\_\_\_

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## CHAPTER VIII.

### Rules relating to Appeals.

46.—Every memorandum of appeal presented to the Board shall be in English.

47.—Every memorandum of appeal or application shall state—

- (a) The name and address of each appellant or applicant ;
- (b) the name and address of each person whom it is proposed to make a respondent ;
- (c) the court in which, and the name of the officer by whom the decree or order objected to was made ;
- (d) the date when such decree or order was made ;
- (e) the names of all the parties to such decree or order, and whether such parties were plaintiffs or defendants, appellants, applicants, or respondents in the court in which such decree or order was made ;
- (f) the relief sought by such appeal ;
- (g) the ground or grounds of appeals which shall be numbered *seriatim*, and which shall set forth concisely, and under distinct heads, the objections to the decree or order appealed against ; and
- (h) the value of the appeal

and shall be signed by the appellant or applicant or by some legal practitioner on his behalf.

48.—If in any appeal it is pleaded that there is in fact on the record no evidence or admission to support the decree this shall be so stated in the grounds of appeal, and the material finding in support of which it is contented that there is no evidence or admission shall also be specifically stated.

No appeal from an appellate decree presented by an advocate, attorney, or vakil, pleader or revenue agent shall be admitted on any such ground as is in this para. referred to, unless such advocate, attorney or vakil, pleader or revenue agent certifies under his hand upon the memorandum of appeal that he has examined the record and that, in his opinion, such ground is well founded in fact. This certificate may, with the permission of the court, be filed after the presentation, but before the admission of the appeal.

49.—Whenever a party to a decree or order desires to appeal therefrom and to make as a respondent to his appeal the legal representative of a person who having been a party to such decree or order, has died after the date of such decree or order, and who, if alive, would be a necessary party as respondent to such appeal, and whose legal representative has not as such been made a party to the decree or order, or to subsequent proceedings thereunder or thereon, the party so desiring to appeal may present for admission in the proper court a memorandum



of appeal with the name of such legal representative mentioned therein as such as that of a respondent, if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make such legal representative, as such a party as a respondent to his appeal and, except as hereinafter provided an affidavit stating each facts as may be necessary in support of his application :

Provided always that the presiding officer of the court in which the memorandum of appeal is presented may, by an order under his hand, allow in his discretion a reasonable time in that behalf for the presentation of such affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal.

50.—Whenever in any suit or appeal from the decree or order in which an appeal may be preferred, a party has before the appealable decree or order in such suit or appeal has been made, died and the name of such deceased party appears to be in such decree or order as that of a party thereto and his representative has not been brought up on the record and such deceased party would, if alive, be a necessary party to an appeal from such decree or order, and any party to such decree or order, or the legal representative of any such party, having a right of appeal from such decree or order, desire to appeal from such decree or order, and to make the legal representative of such deceased party a party to the appeal, he may present for admission in the proper court a memorandum of appeal with the name of such legal representative mentioned therein as a party to the appeal, if at the time when he presents such memorandum of appeal for admission he, along with such memorandum of appeal presents an application for leave to make such legal representative a party to the appeal, and except as hereinafter provided, an affidavit showing that he did not know before the decree or order from which he desires to appeal was made, that such deceased party had died, or that he had no reasonable opportunity of informing the court which made the decree or order, before such decree or order was made, that such deceased party was dead, and stating such other fact as may be necessary in support of his application :

Provided always that the presiding officer of the court in which the memorandum of appeal is present may by an order under his hand, allow in his discretion a reasonable time in that behalf for the presentation of such affidavit if it appears to him that the applicant could not, by the exercise of due diligence, have procured such affidavit in time for presentation, along with the memorandum of appeal.

51.—Whenever, after a memorandum of appeal has been presented, any appellant or any party interested in the maintenance of any objection filed in the appeal under rule 22 or rule 26, Order XLI of the Code of Civil Procedure, first ascertain that a person whose name appears in the memorandum of appeal as that of a party to the appeal, and who, if alive, would be a necessary party to such an appeal or objection, had died before the memorandum of appeal was presented for admission, such appellant or party so interested as aforesaid may, but subject to

the law of limitation, apply for an order that the memorandum of appeal be amended by substituting for the person who had so died as aforesaid his legal representative, if at the time when he presents such application, he, along with such application, except as hereinafter provided, presents for filing an affidavit showing that such application is made with all reasonable diligence after the fact of the death of such person first came to the knowledge of such applicant or the agent, if any, acting on his behalf in the litigation :

Provided always that the presiding officer of the court in which the memorandum of appeal is presented may, by an order under his hand, allow in his discretion a reasonable time in that behalf for the presentation of such affidavit, if it appears to him that the applicant could not, by the exercise of due diligence, have procured such affidavit in time for presentation along with the application.

**52.**—In appeals there shall be filed with the memorandum of appeal copies of the decrees or orders appealed against and of the judgments passed in the case by all the courts subordinate to the court to which the memorandum of appeal is presented.

**52A.**—When the Board has distributed its appellate business among the Members, the order of a single Member is the order of the Board ; but no decree or order coming under the consideration of the Board in appeal shall be modified or reversed without the concurrent judgment of two Members of the Board.

**52B.**—Whenever an order or decree is modified or reversed in appeal by the Board, the judgment or order shall be signed by both the Members concurring therein.

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## CHAPTER IX.

### PART I.

#### Rules regarding the Payment of fees to Legal Practitioners

**62.**—The sums which shall be payable by an unsuccessful party in any suit or proceeding in the revenue courts and offices in these provinces in respect of the fees of his adversary's advocate, pleader, vakil or attorney, shall be calculated at the rates specified in the following schedule. If a revenue agent, and not an advocate, pleader, vakil or attorney, has been employed by the said adversary, a deduction of one-fourth part shall be made from the fees calculated, as herein directed ; and if, though an advocate, pleader, vakil or, attorney has been employed, the officer presiding in the revenue court or office be of opinion that his employment was unnecessary, and that it would have sufficed to employ a revenue agent the fees shall be calculated as for a revenue agent only :

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*Schedule.*

In all suits or applications and in all judicial or *quasi*-judicial proceedings, in any revenue court or office in respect of which the pecuniary value of the claim can be exactly defined :

(a) if the amount or value of the claim does not exceed Rs. 5,000, at 5 per cent. ;

(b) if the amount or value exceeds Rs. 5,000, and does exceed Rs. 20,000, on Rs. 5,000 at 5 per cent. and on the remainder at 2 per cent ;

(c) if the amount or value exceeds Rs. 20,000, and does not exceed Rs. 50,000 on Rs. 20,000 as above, and on the remainder at 1 per cent ;

(d) if the amount or value exceeds Rs. 50,000, on Rs. 50,000 as above, and on the remainder at  $\frac{1}{2}$  per cent. :

Provided—

(1) that in no case shall the amount of any fee exceed Rs. 3,000 ;

(2) that in any suit, application or claim in any revenue office of original jurisdiction, which is undefended the amount to be paid as the fee of the adversary's pleader, or agent, shall be calculated at one-half the sum at which it would have been charged had the suit been defended : and

(3) that the fee shall not be less than Rs. 2 in a contested case and rupee one in an uncontested case.

63.—In addition to the fee awarded under the preceding paragraph, the court may, in any case in which it considers that the employment of more than one legal practitioner was necessary and in which both a senior and a junior practitioner have been employed, award to the senior a fee not exceeding one-third of the amount allowable under the preceding paragraph.

64.—In cases in respect of which the pecuniary value of the claim cannot be exactly defined, as for example in suits for a lease, or the counterpart of a lease, or for abatement or enhancement of rent, or for ejectment or reinstatement or in partition proceedings, the presiding officer of the court or office shall, having regard to the time occupied in the decision of the case and the nature of the question raised therein, fix a reasonable fee.

65.—In partition cases separate fees shall be allowed to the counsel for each of the following stages—the actual fees to be allowed in each case being fixed under paragraph 64 above :

1. All proceedings relating to the grant of the partition application including proceedings under section 111 (c) of the Land Revenue Act, if any.

2. All proceedings relating to the framing of the partition proceedings and the disposal of objections thereon.

3. All proceedings relating to the preparation of lots and the disposal of objections thereon.

66.—A pleader, or revenue agent, receiving a fee under paragraphs 63 and 64 in any suit or proceeding, shall carry the suit or proceeding to an end, and make all necessary applications in the execution department, and a second fee shall not be charged by the courts to the judgment-debtor in the execution department, unless the decree-holder can satisfy the court that it was absolutely necessary to employ another pleader, or revenue agent, in executing his decree and that the services of the pleader, or revenue agent, in the matter were indispensable.\*

67.—If any suit, application or claim is dismissed for default, or upon the merits, or is decreed for the defendant, the defendant's pleader or agent's fee shall be calculated on the whole value of the suit.

68.—If any suit, application, or claim is decreed for the plaintiff as to part only of his claim, and as to the remainder is dismissed, or decreed for the defendant, the fees allowed to each party's pleader or agent, shall be calculated upon the value of that part of the claim in respect of which he has succeeded.

69.—If in any suit for damages, under the rent laws, the plaintiff fails to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance for a pleader or agent's fee in respect of the difference between the amount of damages claimed and the amount recovered, unless the presiding officer of the court, or office shall be of opinion that the amount claimed for damages was unreasonable or excessive, and shall, for that or any other cause (to be specified) direct that a fee for his pleader, or agent, shall be allowed to the defendant. If specially allowed, the amount of such fee shall be calculated upon the amount of damages disallowed to the plaintiff.

70. If several defendants who have a joint or common interest succeed upon a joint defence or upon separate defences substantially the same, not more than one pleader or agent's fee shall be allowed, unless the presiding officer of the court or office shall otherwise order, for reasons which shall be recorded. If only one fee be allowed, the presiding officer shall direct to which of the defendants it shall be paid, or shall apportion it among the several defendants in such manner as he shall think fit.

71. If several defendants who have separate interests, set up separate and distinct defences, and succeed thereon, a fee for one pleader, or agent, for each of the defendants who appear by a separate pleader, or agent, may be allowed in respect of his separate interest. Such fee, if allowed, shall be calculated upon the value of the separate interest of such defendant.

72. The amount in respect of the fee of an adversary's pleader or agent when allowed in any miscellaneous proceeding, or for any other matter than that of appearing, acting or pleading, in a suit, application, or other judicial or quasi-judicial proceeding, prior to decree,

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\* The Board have held, in reply to a reference, that if a power-of-attorney or mukhtarnama is worded accordingly, it may be sufficient to enable a pleader, or revenue agent to conduct both a suit or proceeding and the subsequent execution proceedings.

shall be fixed by the presiding officer of the court or office according to the following scale, viz. :

In proceedings before the Board of Revenue, or in the court or office of a Commissioner of Revenue Rs. 10 to Rs. 80. In the court or office of a Collector of the district, Rs. 4 to Rs. 16.

In the court or office of any Assistant Collector, or tahsildar, Re. 1 to Rs. 10.

73. In proceeding for, or consequent upon, the revival or re-hearing of suit, the legal practitioner's fee, if allowed to the successful party, shall be fixed by the presiding officer of the court or office, at an amount which shall not exceed one-half of the amount that would have been allowed by these rules in case of an original decree. The fee allowed in respect of the revival, or re-hearing, will be irrespective of any fee which may be included in any cost in respect of the original suit or proceeding, which may be adjudged to the successful party by the judgment, or order, in review.

74. The amount to be allowed on account of the fees of an adversary's legal practitioner in an appeal shall be calculated on the same scale as in original suits; and the principles of the above rules as to original suits shall be applied as nearly as may be to appeals.

75. When the interest of several appellants is joined not more than one legal practitioner's fee shall be allowed unless the presiding officer of the court or office, shall otherwise order, for a reason to be recorded. If one fee only be allowed, the presiding officer of the court or office, shall direct to which of the appellants it shall be paid or shall apportion it amongst the several appellants in such proportions as he shall think fit.

76. If several respondents in one appeal appear by separate pleaders, or agents, in determining whether several pleaders' or agents' fees shall be allowed, the presiding officer of the court or office shall be guided by principles laid down in paragraphs 70 and 71.

77. Notwithstanding anything contained in the preceding paragraphs, the presiding officer of the court or office may in any case for special reason to be recorded in the judgment, award a higher or a lower fee than that prescribed in those rules.

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## CHAPTER X.

### Instructions relating to Miscellaneous Rules affecting the Procedure of Revenue Courts.

3A. No legal practitioner shall act for any person in a court, unless he has been appointed for the purpose by such person by a Vakalatnama signed by such person or by his recognized agent or by some other person

duly authorized by or under a power of attorney to make such appointment.

NOTE—A legal practitioner shall not be deemed to act if he only pleads : in the latter case he should file a memorandum of appearance as required under rule 4(5) of Order III of Schedule I to the Code of Civil Procedure, 1908, as amended by Act XXII of 1926.

5. A legal practitioner when unable personally to attend to a case in which he is briefed may hand over the brief to another legal practitioner without the latter filing a vakalatnama or mukhtarnama and the fees to whomsoever paid, shall, if duly certified, be taxable costs.

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## CHAPTER XX

### Rules of Procedure relating to Revisions.

158. An application for revision shall be drawn up and presented in the manner prescribed for appeals and shall be accompanied by a copy of the decree or order in respect of which such application is made and by a copy not only of the judgment, if any, on which such decree or order is founded, but of every court subordinate to the court whose decree or order is sought to be revised.

159. If the decree or order in respect of which such application is made has been passed by the Commissioner the application shall be presented to the Board in the manner prescribed in instruction 2 of Chapter I of the Revenue Court Manual, but if it has been passed by a court subordinate to that of the Commissioner it shall be presented to the Commissioner with a request that it may be submitted by that court to the Board with its recommendation, for orders.

160. Such application may be summarily rejected on the ground that the applicant has failed to prefer an appeal which it was open to him to prefer.

161. If it appears to the Commissioner that there is *prima facie* ground for reporting the case for the orders of the Board the court shall issue a notice to the parties concerned, informing them of the grounds upon which the application has been made and fixing a date upon which any objections which they may have to urge will be considered and recorded.

162. After hearing the parties the Commissioner may dismiss the application or may submit the record to the Board with a recommendation as to the order which should be passed by the Board.

163. On receiving recommendations submitted under paragraph 162 the Board will proceed to pass orders, and will not necessarily hear the parties before doing so.

**163A.** When the Board has distributed its revisional business among the Members, the order of a single Member is the order of the Board : but no decree or order coming under the consideration of the Board in revision, shall be modified or reversed without the concurrent judgment of two Members of the Board.

**163B.** Whenever an order or decree is modified or reversed in revision by the Board, the judgment or order shall be signed by both the members concurring therein.

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## APPENDIX D.

(List of tea estates in which under the provisions of section 30 (5) hereditary rights shall not accrue.  
(Published in the U. P. Gazette of December 30, 1939, Part I, pages 851—861 as amended by later notifications,  
the amended portions being usually given in italics.)

Whereas by the Proclamation under section 93 of the Government of India Act, 1935, dated November 3, 1939, the Governor of the United Provinces has assumed to himself all powers vested in either Chamber of the Legislature of the United Provinces ;

And whereas in exercise of the said powers the Governor has signified his previous approval to the issue of this notification ;

Now, therefore, in exercise of the powers conferred by sub-section (5) of section 30 of the United Provinces Tenancy Act, 1929, (XVII of 1929), read with section 22 of the United Provinces General Clauses Act, 1904 (I of 1904), the Governor hereby notifies that in the interest of the tea industry hereditary right shall not accrue under the said Act in the areas included in tea estates in the Dehra Dun district specified in the schedule annexed hereto :

## SCHEDULE.

Serial number.	Name of tea-garden.	Name of tea-village.	Name of mahal.	The whole mahal or No. of plots.	Total area.
1	2	3	4	5	6
1	Ambari ... Do. ... Do. ....	Ambari ... Bulaqiawala ... Mailhuwala khalsa.	Nil ... Nil ... Nil ...	The whole mauza ... Ditto ... The whole mauza except plots Nos. 180 to 182, 211, 216 to 219, 223 to 341, 238/418, 342/424 (Area 121.23 acres.) Grand Total ...	308.07 acres. 241 88 " Approximately 263.66 acres. 813.61 acres.



Serial number	Name of tea-garden.	Name of tea-village.	Name of mahal.	The whole mahal or No. of plots.	Total area.
1	2	3	4	5	6
2	Walibagh ...	Jewangadh ...	Ilahi Bux ...	<p>Plots Nos 262M (.25 acre), 263M (.10 acre), 367, 370, 376M (1.19 acres), 379M (2.7 acres), 383 to 386, 390M (.08 acre), 393M (.23 acre), 398, 401 to 406, 408, 409, 415, 484 to 486, 487M (.84 acre), 488, 489M (.08 acre), 490 to 494, 507M (.47), 508, 534M (.05), 540, 541, 542, 543, 545 to 547, 548M (.04 acre), 549, 550M (.11 acre), 551 to 554, 555M (.43 acre), 557 to 560, 561M (.96 acre), 562 to 564, 566, 577M .35, 755, 760, 761M (3.16 acres), 762, 763M (.20 acre), 765M (.45), 770 to 772, 773M (.10 acre), 775M (.10 acre), 777M (1.87 acre), 274/785, 486/794.</p> <p>Total ... ..</p>	Approximately 100.83 acres.
					Approximately 100.83 acres

3	Jewangarh ...	Jewangarh Grant.	Khudabux ...	Plots Nos. 366, 368, 369, 371 to 374, 376, 379 to 382, 387 to 393, 395 to 397, 399, 400, 407, 410 to 419, 495 to 507, 509 to 539, 555, 556, 561, 564 565, 567 to 578, 756 to 759, 763, to 769, 773 to 783.	Approximately 130.53 acres.
				Total ...	Approximately 130.53 acres.
4	Annfield Grant	Annfield ...	Nil	Plots Nos. 729, 731 to 736, 739, 740, 742 to 744, 746, 753, 755, 756, 761 to 763, 765, 767, 769 to 772, 774, 785 to 791, 793, 794, 796, 797, 799 to 805, 807, 808, 810, 812, 813, 816 to 818, 820 to 830, 832 to 835, 837 to 846, 848, 849, 851, 854 to 856, 859 to 878, 880, 881, 883 to 886, 889 to 914, 917 to 921, 1846, 1865, 1939 to 1942, 1967 to 1970, 1974, 1975, 1977 to 1979, 1984 to 1986, 1989 to 1991, 1994, 1995, 1999, 2012 to 2037, 2039 to 2089, 2091, 2094, 2098 to 2100, 2102, 2103, 2108, 2110, 2113, 2114, 2118 to 2121, 2123, 2124, 2128 to 2130, 2138, 2139, 2141, 2142, 2174, 2175, 2178 to 2180, 2185, 2186, 2191 to 2237, 2239 to	Approximately 829.59 acres.

Serial number	Name of tea-garden.	Name of tea-village.	Name of mahal.	The whole mahal or No. of plots.	Total area.
1	2	3	4	5	6
				2241, 2243 to 2249, 2251 to 2258, 2279, 2287, 2291, 2293, 2295 2297, 2299 to 2307, 2309 to 2312, 2314, 2317, 2321, 2325 to 2327, 2329, 2330, 2350 to 2361, 2375, 2391, 2401, 2405 to 2428, 2430 to 2477, 2501, 2504, 2510 to 2513, 2515 to 2524, 2526 to 2528, 2531 to 2537, 2540 to 2578, 2580 to 2587, 2589, 2590, 2592 to 2598, 2599M (-27 acre). 2600 to 2604, 2606 to 2651, 2656 to 2695, 2697 to 2748, 2752 to 2778, 2806, 2867, 2870 to 2877.	
				Total	Approximately 829.59 acres.

Udiya Bagh...	West Hope Town.	(a) Udiya Bagh.	The whole mahal	...	420.43 acres.
		(b) H. G. Raynor.	Plots Nos. 1581M (.46 acre), 1586M (.30 acre), 1603M (2.21 acres), 1633M (.09 acre), 1660, 1687, 1688, 1689M (.06 acre), 1690 to 1692, 1693M (1.10 acre), 1694, 1716, 1736M (.14 acre), 1771M (1.95 acres), 1772 to 1773, 1775 to 1781, 1783M (.40 acre), 1784 to 1786, 1787M (.63 acre), 1793, 1794, 1904, 1905, 1908, 1910 to 1918, 1920 to 1922, 1926 to 1928, 3355, 3356, 1922/4806, 1921/4807, 1919/4809, 1912/4810.	...	Approximately 49.74 acres.
Ditto	Ditto	(c) Eden Bagh	The whole mahal	...	131.21 acres.
Ditto	Ditto	(d) Asan Bagh	Plots Nos. 2968 to 2976, 2980 to 2986, 2988 to 2994, 2996, 3000 to 3103, 3105 to 3115, 3126 to 3148, 3172 to 3201, 3228M (6.33 acres), 3188/4851, 3048/4878.	...	Approximately 159.19 acres.
			Grand Total	...	760.57 acres.

Serial number.	Name of tea-garden.	Name of tea-village.	Name of <i>mahal</i> .	The whole <i>mahal</i> or No. of plots.	Total area.
1	2	3	4	5	6
6	Herbertpur...	West Hope Town.	Mrs. White...	The whole <i>mahal</i> ...	225.49 acres.
7	Goodrich ...	Goodrich and Lachmipur (mauza West Hope Town).	S. D. Vansittart.	Except plots Nos. 1833, 1834, 1836, 1837, 1839M (.10 acres), 1842, 1850, 1852 to 1863, 1866, 1867, 1869, 1876, 1877, 1879, 1884 to 1886, 1889, 1890M (.04 acre), 1892 to 1894, 1898 to 1902, 1936 to 1946, 1949M (.50 acre), 1950M (.10 acre), 1951 to 1955, 1960, 1962 to 1964, 1966 to 1968, 1969M (.10 acre), 1971, 1972, 1974 to 1976, 1982, 1984, 1986 to 1990, 1992 to 2012, 2160, 2162 to 2165, 2181, 3349, 3353, 3354, 3363, 3365, 3367, 3371 to 3380, 3383 to 3390, 3392, 4577, 4581 to 4634, 4635M (4.06 acres), 4636M (2.48 acres), 4637 to 4654, 4655M (3.47 acres), 2010/4805, 3353/4873.	Approximately 863.41 acres.
				Area 164.24 acres.	

## Tea Estates

969

Goodrich ...	Chharba ...	H. D. Vansit- tart.	<p>Plots Nos. 533 to 539, 548M (4.09 acres), 565, 566, 570, 595M (.37 acre), 596 to 599, 600M (2.08 acres), 601, 625, 637M (1.65 acres), 638M (2.49 acres), 639, 642, 646M (.34 acre), 697, 698M (.13 acre), 699 M (.49 acre), 700, 701M (4.07 acres), 769, 781M (.25 acre), 789, 793, 795, 804, 805, 806, 810M (.16 acre), 811M (.16 acre), 816, 817, 821M (.15 acre), 823, 824, 826, 837M (.51 acre), 843M (.05 acre), 845M (.86 acre), 846M (.34 acre), 847M (.20 acre), 849M (.49 acre), 851M (.15 acre), 852, 853, 859, 860, 866M (.23 acre), 867M (.10 acre), 871 to 873, 874M (.40 acre), 957 to 960, 971, 974, 975M (.75 acre), 981</p>	Approximately 67.91 acres.
			Grand Total ...	931.32 acres.
8 Lakhnawala	Lakhnawala	...	<p>Except plots Nos. 65 to 68, 69M (.74 acre), 70 to 81, 132 to 162, 164 to 167, 255 to 278, 279M (.17 acre), 282M (.20 acre), 299, 300M (.19 acre), 301 to 332, 304/333. Area 90.44 acres.</p>	Approximately 157.65 acres.
			Total ...	Approximately 157.65 acres.

Serial number	Name of tea-garden.	Name of tea-village	Name of mahal.	The whole mahal or No. of plots.	Total area.
1	2	3	4	5	6
9	Selaqui ...	Central Hope Town.	Vansittart ...	Plots Nos. 623 to 645, 675 to 703, 702/1376, 749 to 750, 752 to 769, 771 to 784, 786 to 789, 794 to 796, 837, 838M (.27 acre), 848, 849, 851M (4.71 acres), 852M (.84 acre), 853 to 856, 857M (11.37 acres), 858M (.42 acre), 859M (.09 acre), 860, 861, 862M (9.71 acres), 863, 864M (5.41 acres), 865M (1.49 acres), 866M (0.01 acre), 867, 869, 871M (5.94 acres), 873M (.39 acre), 874, 877M (8.06 acres), 879M (5.12 acres), 883M (10.20 acres), 887M (12.40 acres).	191.36 acres.

Selaqui ...	Attak Farm	Nil	...	Plots Nos. 1M (4.57 acres), 2 to 9, 10M (4.00 acres), 11M (3.25 acres), 12M (0.48 acre), 13, 22M (0.36 acre), 23M (0.81 acre), 26M (0.20), 28M (0.05), 29M (2.22), 30M (0.15), 31, 32, 33M (1.00), 34M (0.35), 36M (14.49), 39M (4.08), 123, 124M (5.00), 311M (13.58)	Approximately 74.57 acres.
			GRAND TOTAL	...	Approximately 265.93 acres.
10 East Hope Town.	East Hope Town.	Tea Company		The whole mahal except plots Nos 138, 139, 170, 231 to 234, 236 to 240, 298, 301 to 305, 307, to 314, 315M (40), 316, 317, 318M (35), 319 to 329, 331M (0.32), 332M (0.02), 333, 334M (0.04), 336, 337M, (0.56), 338, 340, 341M (0.33), 343M (0.32), 345 to 360, 362, 363, 366 to 369, 370M (0.08), 371, 372, 373M (3.17), 374 to 376, 378 to 383, 386M (1.00), 498M (1.49), 500M (0.41), 504, 505, 506M (0.34), 507, 508M (1.18), 509, to 519, 521, 522, 523M (0.03), 524, 525.	Approximately 2325.42 acres.



Serial number	Name of tea-garden.	Name of tea-village.	Name of mahal	The whole mahal or No. of plots	Total area.
1	2	3	4	5	6
	East Hope Town.	East Hope Town.	Tea Company	526M (0.08), 527M (0.42), 528, 529M (0.10), 530, 574 to 579, 580M (0.69), 582M (1.24), 583M (0.3), 673M (1.50), 676, 677M (1.73), 678 to 682, 683M (0.85), 684, 685, 686M (0.15), 687M (0.82), 688 to 692, 693M (0.08), 694 to 698, 699M (0.12), 700M (0.22), 701M (0.17), 704 to 706, 707M (3.92), 708, 713, 717M (0.42), 750, 751, 752M (0.50), 754 to 760, 762 to 771, 780M (1.48), 781 to 784, 805M (0.78), 806 to 809, 810M (0.60), 811 to 816, 817M (0.80), 819M (0.57), 820M (1.95), 821, 822, 838, 839M (0.71), 840M (1.04), 841, 842, 843M (1.73), 844, 845, 1004M (0.54), "Area 169.50 acres".	Approximately 2325.42 acres.
				Total	Approximately 2325.42 acres.

11	Aroadia Grant and Harbans-wala Garden.	Aroadia Grant	Nil	The whole manza except plots Nos. 1 to 50, 51M (.23), 52 to 95, 99 to 113, 115, 116, 118, 119, 120, 121M (.45), 123, 124, 127 to 150, 153M (.74), 154, 157 to 168, 172 to 182, 185M (.52.74), 187, 1399, 1400, 1415M (25.17), 1737, 1761, 1762, 1764 to 1766, 1768, 1769, 1771 to 1782, 1783M (.02), 1784 to 1806, 1807M (.11), 1808, 1809, 1811, 1813, 1822 to 1833, 1834M (0.05), 1835, 1836M; (2 01), 1837 to 1878, 1882 to 1889, 1890M (.3.56), 1893M (14.64), 1896M (.40), 1897M (0.05), 1898M (0.15), 1899M (0.55), 1926M (4.26), 1927 to 1929, 1930M (74.37), 2052M (29.78), 2053 to 2066, 2067, 2068 to 2096, 2097, 2098 to 2108, 2111, 2113 to 2182, 2184 to 2287, 2289 to 2331, 2333 to 2352, 2353M (.45 88), 2354 to 2367, Area 1520.11 acres	Approximately 2803.52 acres.
					</

Serial number.	Name of tea-garden.	Name of tea-village.	Name of <i>mahal</i> .	The whole <i>mahal</i> or No. of plots.	Total area.
1	2	3	4	5	6
				51, 52 to 54, 56, 57, 58M (.44 acre), 59M (2.92 acres), 63, 64M (11 acres), 65M (3 12 acres), 70, 71M (.30 acre), 72, 74, 75 to 78, 79M (.20 acre), 80 to 88, 89 M (.26 acre), 90 to 95, 97M (.40 acre), 98 to 102, 104 to 108, 109 M (.28 acre), 110, 111M (.08 acre), 112M (.13 acre), 113, 114, 116, 117 M (.02 acre), 119 to 121, 122 M (.09 acre), 123, 124, 125M (.12 acre), 129M (.08 acre), 130 to 151, 152M (.51 acre), 153 to 159, 160 to 164, 165, 175M (.11 acre), 188 M (0.2 acre), 215 to 217, 218M (.21 acre), 219, 220M (.20 acre), 221 to 223, 224M (0 46 acre), 225 to 234, 235 (.05 acre), 238, 239, 241 M (1.76 acre), 242 to 250, 251, 252 M (9.60 acres), 37/254, 46/257, 39/256, 26/253.	

Arcadia Grant and Harbanswala Garden, Farming, Dehra Tea Company.	Chak	Bar Kala.	Nil	...	The whole mauza	...	26.66 acres.
Do. ...	Harbanswala	Nil	...	...	The whole mauza except plots Nos. 117 to 120, 129, 131, 134 to 136, 138 to 141, 143, 145 to 147, 151, 157 to 159, 161, 162, 164M (.64 acre), 172, 176 to 178, 181 to 188, 194 to 196, 198, 202, 205 to 209, 211, 216, 217, 181/228, 178/229. Area 18.97 acres.	...	Approximately 275.31 acres.
Do. ...	Shahpur Sator.	...	...	...	Plots Nos. 138 to 144, 150 to 153.	...	Approximately 68.18 acres.
Do. ...	Malukawala	...	...	...	Plots Nos. 1 to 7, 29 to 98, 111 to 114, 123 to 125, 127 to 136, 137, 138.	...	Approximately 201.47 acres.
Do. ...	Kaonli	Wazir Singh	...	...	Plots Nos. 816M (3.91 acres), 817M (.72 acre), 818M (2.09 acres.)	...	6.72 acres.
Do. ...	Do. ...	Baldeo Singh	...	...	Plots Nos. 796M (8.49 acres), 798M (2.21 acres.)	...	11.00 "
Do. ...	Do. ...	Jodh Singh	...	...	Plots Nos. 395M (36 acre), 793, 795, 796M (4.68 acres), 814, 815, 819M (3.94 acres), 820, 821.	...	22.02 "

Serial number.	Name of tea-garden.	Name of tea-village.	Name of mahal.	The whole mahal or No of plots.	Total area.
1	2	3	4	5	6
	Arcadia Grant and Harbans-wala Garden, Farming, Dehra Tea Com-pany.	Kanoli	Zaharia Singh	Plots Nos. 443, 791, 792, 794, 795M (06 acre), 796, 798, 819M (3.43 acres), 824 to 827, 842.	27.24 acres.
	Do. ...	Do. ...	Gohar Singh	Plots Nos. 393, 411, 524, 798M (12.76 acres), 799 to 802, 803M (8.32 acres), 804 to 808, 828M (1.01 acres), 829 to 835, 837, 839 to 841, 844, 845, 848 to 852.	Approximately 167.83 acres.
			Village Total (Kanoli)	...	234.81 acres.
			Grand Total	...	Approximately 3,843.28 acres

Harbhajwala	Harbhajwala	...	Plots Nos. 2, 8 to 11, 12M (1.27 acres), 14 to 35, 36M (.15 acre), 37, 39, 44, 47, 48, 49 (.08), 50M (2.48 acres), 52 to 57, 59 to 63, 65 to 69, 71, 72M (1.21 acres), 73, 74, 76, 83, 84, 88M (1.10 acres), 90, 91M (1.02 acres), 92M (1.60 acres), 93M (1.72 acres), 94, 95M (1.67 acres), 96M (2.39 acres), 97M (1.10 acres), 98M (.78 acre), 100 to 104, 105M (.59 acre), 106 to 108, 111 to 115, 117, 119, 120M (.38 acre), 121, 124, 125, 127 to 131, 132M (.76 acre), 133, 134, 136, 137, 143M (.54 acre), 149M (.22 acre), 151, 152M (.34 acre), 153M (.28 acre), 164M (.26 acre), 169, 175, 176M (.07 acre), 178M (.18 acre), 182M (.09 acre), 184 to 186, 188, 175/189M (.22 acre), 175/10M (.13 acre), 1/192 to 1/198, 40/199 to 40/205, 43/206 to 43/211.	Approximately 174.38 acres.
13	Kaulagarh ...	...	Total ...	Approximately 174.38 acres.
	Kaulagarh ...	...	The whole mauza ...	426.31 acres.



Kaulagarh ...	Loharwala ...	Nil ...	Plots Nos. 2, 3, 4, 5, 6, 7, 22, 23, 24, 25, 26, 28M (.69 acre).	Approximately 5.72 acres.
Do. ...	Malukawala	(Attached to Kaulagarh tea-garden).	Plots Nos. 8 to 28, 99 to 110, 115 to 122, 126.	Approximately 72.92 acres.
Do. ...	Khemadoz ...	Do. ...	The whole mauza ...	50.47 "
Niranjanpur,	Niranjanpur,	Butt Sahib...	GRAND TOTAL (approximately) ...	573.75 "
			The whole <i>khevat</i> No. 2 of <i>mahal</i> Mr. Butt Sahib with the exception of plots Nos. 9, 10, 66, 70, 75 to 77, 83, 105 to 113, 190M (.39 acre) 465M (.23 acre). Area 6.11 acres.	Approximately 138.52 acres.
Do. ...	Do. ...	Do. ...	The whole <i>khevat</i> No. 4 of <i>mahal</i> Mr. Butt Sahib with the exception of plot No. 257M (1.36 acres).	47.57 acres.
Do. ...	Do. ...	Do. ...	<i>Khevat</i> No. 1 plots Nos. 219, 220, 221, 251 of <i>mahal</i> Butt Sahib.	Approximately 1.00 acre.
Do. ...	Do. ...	Devi Singh...	The <i>khevat</i> No. 4 of <i>mahal</i> Devi Singh	57.25 acres.
			Village Total (Niranjanpur) ...	244.34 "



Serial number	Name of tea-garden.	Name of tea-village.	Name of mahal.	The whole mahal or No. of plots.	Total area.
1	2	3	4	5	6
	Niraujanpur	Kaonli ...	Gohar Singh	Plots Nos. 65M (2.66 acres), 987M (.11 acre), 1513M (5.03 acres).	7.80 acres.
	Do. ...	Do. ...	Wazir Singh	Plots Nos. 755M (.54 acre), 756M (.08 acre), 853M (2.31 acres).	2.93 "
	Do. ...	Do. ...	Jodh Singh...	Plots Nos. 757M (.02 acre), 758 to 774, 777 to 781, 784 to 788, 790M (7.60 acres), 847, 853M (2.14 acres), 854 to 861, 862M (1.94 acres), 863M (7.81 acres), 865, 866, 889, 892M (3.18 acres), 894M (0.28 acre), 895M (9.10 acres).	113.29 "
	Do. ...	Do. ...	Zahariya Singh	Plots Nos. 775, 846, 847, 853M (1.24 acres), 862M (.14 acre), 864, 867 to 882, 883M (.94 acre), 885 to 891, 892M (.82 acres), 893, 895M (.01 acre), 1264 to 1266.	Approximately 118.62 acres.
				Village Total (Kaonli) ...	242.64 "
				Grand Total	486.98 "

15	Banjarwala	Banjarwala	Nil	...	The whole mauza except plot No. 261. (Area 30 acre.)	481.61 acres.
	Do. ...	Chak Banjarwala.	Nil	...	The whole mauza	5.63 "
					Grand Total	487.24 "
16	Gorakhpur	Shahnagar ...	Mr. L. G. Quarry.	...	The whole mauza	145.69 acres.
	Do. ...	Do. ...	Gumani ...	...	Plots Nos. 122, 128, 166M (3.52 acres). 187M (1.33 acres), 189, 190, 191, 194, 195, 196, 197M (10 acre).	Approximately 25.20 acres,
					Village total	170.89 acres.
	Do. ...	Chak Shahnagar.	Mr. L. G. Quarry.	...	The whole mauza	25.57 "
					Grand Total	196.46 "

Serial number.	Name of tea-garden.	Name of tea-village.	Name of <i>mahal</i> .	The whole <i>mahal</i> or No. of plots.	Total area.
1	2	3	4	5	6
17	Raipore.	Raipore ...	Kirta Ram ...	Plots Nos. 1560, 1626, 1627M (1·81), 1631, 1633, 1635M (2·34), 1636, 1827, 1828, 1829M (2·29), 1830, 1831.	Approximately 52·14 acres.
	Do. ...	Do. ...	Faqeer Chand	Plots Nos. 1559, 1561, 1569, 1571 1573, 1574, 1593M (0·24), 1594, 1595, 1596M (1·00), 1602M (7·40), 1603M, (0·42), 1615, 1619M (7·24), 1624, 1627M (0·52), 1628, 1635M (0·08), 1630.	Approximately 30 12 acres.
	Do. ...	Do. ...	Ganga Vallabh	Plots Nos. 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1570, 1572, 1585, 1587, 1589, 1591, 1593M (·24), 1597, 1599, 1602M (7·20), 1603M (0·33), 1604 to 1614, 1619M (5·06), 1620, 1621, 1622, 1623.	Approximately 29·90 acres.

Do.	...	Do.	...	Ramanand ...	Plots Nos. 203M (3.35), 1578M, (9.19), 1590, 1592M (1.74), 1596M (1.22), 1598, 1600, 1601, 1602M (1.00) 1625M (0.11), 1634.	Approximately 24.60 acres.
Do.	...	Do.	...	Nanak Chand	Plots Nos. 203M (1.05), 204, 205, 1575, 1576, 1577, 1578M (4.41), 1579 to 1584, 1586, 1588, 1592M (1.86 acres).	Approximately 27.72 acres.
Do.	...	Raipore	...	Kali Ram ...	Plots Nos. 1816 to 1821, 1822M (0.47), 1823, 1825, 1829M (1.33), 1836, 1837M (12.70), 2342.	Approximately 52.74 acres.
Do.	...	Do.	...	Mathura Per-shad.	Plots Nos. 1822M (0.16), 1837M (9.55), 1838, 2343M (0.38), 2344, 2345 to 2346M (6.20), 2347.	Approximately 19.42 acres.
Do.	...	Do.	...	Kushumbri Lal	Plots Nos. 1826, 1835, 2161, 2315 to 2335, 2340M (.24 acre), 2341M (.12 acre), 2343M (.23 acre), 2346M (2.05 acres).	Approximately 20.51 acres.
Village Total					...	Approximately 257.15 acres.

Serial number.	Name of tea-garden.	Name of tea-village.	Name of mahal.	The whole mahal or No. of plots.	Total area.
1	2	3	4	5	6
	Raipore ...	Ladpur ...	Bahadur Singh	Plots Nos. 64 to 66, 74, 80 ...	32.13 acres.
	Do. ...	Do. ...	Udey Singh...	Plots Nos. 69, 70 and 72 ...	40.14 acres.
	Do. ...	Do. ...	Jai Singh ...	Plots Nos. 81, 82 ...	25.05 acres.
				Village Total (Ladpur) ...	97.32 acres.
	Do. ...	Nathanpore...	...	The whole village except plots Nos. 40M (29 acre), 275, 277 to 286, 287 to 297, 306M (.09 acre), 309M (2.09 acres), 362 to 404, 417 to 420, 422, 423, 435, 438. Area 40.99 acres.	495.41 acres.
				Village total (Nathanpore)...	495.41 acres.
				Grand Total ...	Approximately 849.98 acres.

18	Mohakampore	Mohakampore	Mr. Harrison	The whole mahal	...	...	280.91 acres.
19	Kunwawala...	Kunwawala...	...	The whole mauza, except plots Nos. 31 to 38, 43, 110 to 123, 125 to 128, 130 to 135, 142 to 144, 220, 307, 308, 317 to 320, 327, 336 to 339, 342 to 344, 364, 365. Area 49.46 acres.	...	...	Approximately 353.29 acres.
				Total, Kunwawala	...	...	Approximately 353.29 acres.
				GRAND TOTAL	...	...	Approximately 13,787.11 acres.

## APPENDIX E.

(1)

UNITED PROVINCES CONSOLIDATION OF HOLDINGS  
ACT, 1939.

(No. VIII OF 1939.)

*[Received the assent of the Governor of the United Provinces on August 3, 1939, under section 75 of the Government of India Act, 1935, and was published in the United Provinces Government Gazette on August 19, 1939.]*

WHEREAS it is expedient to provide for the development of agriculture through the consolidation of agricultural holdings ;

It is hereby enacted as follows :

## CHAPTER I.

## PRELIMINARY.

Short title, extent and commencement.      I. (1) This Act may be called the United Provinces Consolidation of Holdings Act, 1939.

(2) It extends to the whole of the United Provinces except the Kumaun Division, the Jaunsar-Bawar Pargana of the Dehra Dun District and the portion of the Mirzapur District south of the Kaimur Range :

Provided that the Provincial Government may by notification in the official Gazette direct that the Act shall apply to the Kumaun Division or to any portion of that division subject to such modification, if any, as it thinks fit and may, by a like notification from time to time, alter such direction.

(3) It shall come into force on such date as the Provincial Government may, by notification in the official Gazette, direct.

Interpretations.      2. In this Act, unless there is something repugnant in the subject or context,—

(1) subject to the provisions of the following sub-sections, words used in this Act which are defined or explained in the United Provinces Land Revenue Act, 1901, the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, have the meanings assigned to them therein ;

(2) “applicant” means an applicant for an order of consolidation ;

(3) “consolidation” means the re-distribution of land between the cultivators thereof in such a way as to make the areas cultivated by them more compact ;

(4) “consolidation officer” means an officer appointed by the Provincial Government to perform in any local area the duties of a consolidation officer under this Act ;

(5) “cultivation” includes cultivation by servants or by hired labour and “cultivate” shall be construed accordingly ;

(6) "cultivator" means a person other than a sub-tenant or a tenant of *sir*, who cultivates a holding and includes a person who has leased the whole or any part of his holding to a sub-tenant or to a tenant of *sir*, and in case of a joint holding means the whole body of cultivators who are joint in such holding;

(7) "holding" includes *sir* and *khudkasht*, but does not include grove-land or land let or held for pasturage, or the holding of an under-proprietor, permanent lessee, permanent tenure-holder or thekadar;

(8) "*khudkasht*" means land, other than *sir*, cultivated by the proprietor, under-proprietor, permanent lessee or a permanent tenure-holder thereof;

(9) "permanent lessee" means a person in Oudh who holds land under a heritable non-transferable lease and who is entered in the register maintained under the provisions of clause (b) or clause (c) of section 32 of the United Provinces Land Revenue Act, 1901.

## CHAPTER II.

### APPLICATION FOR CONSOLIDATION.

3. (1) The proprietor of a village or *mahal*, or the lambardar or the cultivators of more than one-third of the cultivated area of a village, may apply in the prescribed form to the consolidation officer for an order of consolidation of such village.

(2) An application made under the provisions of sub-section (1) shall contain a list of the holdings, with their areas, of which the applicants claim to be cultivators.

4. (1) On receipt of an application made under the provisions of section 3, the consolidation officer shall cause a notice to be affixed in a prominent place in the village announcing that the applicant or applicants have applied for an order of consolidation of the village and calling upon any cultivator or co-sharer, if he so wishes, to show cause within one month of the affixation of such notice why an order of consolidation should not be made.

(2) When an application is made by the cultivators, a copy of the notice affixed under the provisions of sub-section (1) shall be served on the lambardar, if any, of the village and where there is more than one lambardar, on each such lambardar.

(3) When an application is made by a proprietor or the lambardar a copy of the notice affixed under the provisions of sub-section (1) shall be served on the co-sharers also.

5. (1) On the expiry of the period mentioned in section 4, the consolidation officer, after hearing any cultivator or lambardar or co-sharer who appears to show cause why an order of consolidation should not be made, shall proceed to make such order unless, after making such inquiry as he thinks fit, he is satisfied that the applicants are



not the cultivators of more than one-third of the cultivated area of the village or unless, with the previous sanction of the collector, he considers that an order of consolidation should not be made.

(2) An order by the consolidation officer under the provisions of subsection (1) to the effect that an applicant is or is not the cultivator of a holding of which he claims to be the cultivator shall not affect the right of such applicant or of any person who contests such applicant's claim to establish his claim to such holding in any court of competent jurisdiction.

6. The collector or an officer authorized by the Provincial Government in this behalf may after giving notice of his intention to do so in the manner provided in section 4 and hearing any objections or suggestions that may be made by any lambardar, co-sharer or cultivator, direct an assistant collector of the first class to make an order of consolidation of a village and may of his own motion or on the application of any proprietor, lambardar or co-sharer or cultivator of the village, make proposals regarding the way in which the scheme for consolidation of the village should be drawn up and on receipt of such direction such assistant collector shall proceed according to the provisions of Chapter III of this Act, and any such assistant collector shall have all the powers of a consolidation officer under this Act.

### CHAPTER III.

#### PROCEDURE AND POWER OF THE CONSOLIDATION OFFICER.

7. (1) Unless the collector otherwise directs no application for the partition of a mahal of a village with respect to which an application for an order of consolidation has been made under the provisions of this Act shall be made in any court between the date of the application for an order of consolidation and the date on which the consolidation scheme is confirmed by the collector or such application is dismissed.

(2) If, on the date on which an application for an order of consolidation is made, under the provisions of section 3, an application for the partition of any mahal of the village is pending in any court, the application for an order of consolidation shall, unless the collector otherwise directs, be rejected.

8. (1) When the consolidation officer has made an order for consolidation, he shall, before preparing the outline of a consolidation scheme, examine and test the accuracy of the village map and record of rights, and decide whether a re-survey or correction of the village map or of the village register, or both, is required before the outline is prepared. If he decides that re-survey, or correction, or both, as the case may be, is required before an outline of consolidation can be prepared, he shall apply to the collector to place the village under survey or record operations, or both, under Chapter IV of the United Provinces Land Revenue Act, 1901.

(2) If the consolidation officer decides that re-survey or correction of the village map or of the record of rights or both, as the case may be, is not required, or if re-survey or correction has been made under the provisions of sub-section (1), he shall, after giving reasonable notice to the proprietor, lambardar and the cultivators of the village, and after considering any directions which may have been made under section 6, visit the village and prepare, in consultation with such persons concerned as may appear for the purpose, an outline of a scheme for consolidating the holdings of cultivators in the village.

(3) The outline of the consolidation scheme shall set forth in writing and by means of maps how the consolidation is to be made and shall specify by means of the  *khasra*  numbers of the fields the holding which is allotted to each cultivator in exchange for each of his original holdings.

(4) The consolidation officer shall, in accordance with rules made by the Board, ensure that, as far as possible, each cultivator is given land suitable for the cultivation of the principal crops grown in the village and that the valuation of the holdings allotted to a cultivator is equal to the valuation of his original holdings and shall demarcate and divide off each holding so allotted.

(5) If the consolidation officer, for reasons to be recorded, finds that it is impracticable to allot land in accordance with the provisions of sub-section (4) regarding valuation, he shall, in accordance with rules made by the Board, order that any cultivator who receives holdings of a valuation less than that of his original holdings shall receive compensation from those cultivators who have received holdings of a valuation exceeding that of their original holdings.

9. When the outline of the consolidation scheme has been prepared in accordance with the provisions of section 8, the consolidation officer shall cause a map and records displaying the scheme to be laid open for inspection at his office and at a suitable place in the village, and shall issue a general notice to the proprietor, lambardar and the cultivators of the village that such map and records may be inspected either in the village or at his office within one month of the date of publication of such notice, and that any person affected thereby may make an objection within thirty days of the date of publication of such notice.

10. (1) The consolidation officer shall decide in the village and in the presence of such cultivators as may be present all objections made in accordance with the provisions of section 9, and after modifying the outline of the consolidation scheme and the map and the records, as may be necessary, shall submit the record to the collector for confirmation of the consolidation scheme.

(2) The consolidation scheme shall not be final until the collector has decided all the appeals filed under section 18 and has passed an order confirming it.

(3) When the scheme has been confirmed the collector shall issue a proclamation thereof, and it shall take effect from the first day of July next following the date of such proclamation.

**11.** The consolidation officer shall, in accordance with the consolidation scheme prepare a new map and a new register under section 32, sub-clause (c) of the United Provinces Land Revenue Act, 1901.

New register of cultivating rights.

**12.** (1) If a cultivator has made an improvement on or affecting any land, such land shall, subject to the provisions of sub-section (2), be allotted to him and the consolidation officer shall in making the consolidation scheme have due regard to the desirability of allotting to such cultivator other land near such land.

Allotment of land with improvement or award of compensation thereof.

(2) If the land on which an improvement has been made or which is affected by an improvement cannot conveniently be allotted to the cultivator who made it but is allotted to another cultivator, the consolidation officer shall award compensation to the cultivator who made the improvement in accordance with the provisions of sections 117 and 118 of the Agra Tenancy Act, 1926, or of section 27 of the Oudh Rent Act, 1886, as the case may be, or the corresponding provisions of any law for the time being in force, and the consolidation scheme shall not be confirmed until such compensation is realized from the cultivator to whom such land is allotted :

Provided that the consolidation officer shall not refuse to award compensation merely on the ground that the improvement was made more than thirty years before such award :

Provided further that the landholder, if any, or the cultivator who made the improvement may, if he wishes, pay such compensation.

(3) When compensation has been paid under the provisions of sub-section (2), the improvement shall, for all purposes, be deemed to have been made at the expense of the cultivator or the landholder, who paid such compensation, as the case may be.

(4) Any amount due from a cultivator or landholder under the provisions of this section shall be recoverable as an arrear of land revenue.

**13.** (1) On the date on which an order confirming a scheme of consolidation comes into force the proprietary or other rights of a cultivator whose land is allotted in exchange for other land shall be extinguished in the land so allotted and he shall have the same rights and be subject to the same liabilities in respect of the land allotted to him as he possessed in the land exchanged therefor and such rights and liabilities shall be specified in the consolidation scheme :

Rights after consolidation.

Provided that the consolidation officer may, in the consolidation scheme, direct that the provisions of this sub-section shall apply with such modifications as he considers necessary if in his opinion their

application in full will, in any particular case, cause injustice to any party interested in such order.

(2) Notwithstanding anything contained in any law for the time being in force if the land allotted in exchange for other land is subject to any lease, mortgage or other encumbrance, such lease, mortgage or other encumbrance shall be transferred and shall attach to such other land or to such part of such other land as may be specified in the consolidation scheme, and thereupon the lessee, mortgagee or other encumbrancer shall cease to have any right in or against the land from which the lease, mortgage or other encumbrance is so transferred.

14. (1) Whenever it appears to a consolidation officer that a village should be placed under survey or record operations, or both, before an outline of a consolidation scheme is prepared, he may apply to the collector that the village should be placed under survey or record operations or both.

(2) Notwithstanding anything in the United Provinces Land Revenue Act, 1901, the collector, if he is satisfied that a re-survey or revision records, or both, as the case may be, is required, may declare the village to be under survey or record operations or both, and thereafter the provisions of Chapter IV of the United Provinces Land Revenue Act, 1901, shall apply to such village.

(3) On such declaration the collector shall have all the powers of a record officer, and the consolidation officer shall have all the powers of an assistant record officer.

15. (1) If on the date on which an application for an order of consolidation is made there is pending in the court of first instance any application or suit in which the nature of the relief sought is a decision as to tenant right or *sir* right, or as to a right to cultivate, or as to exchange of land in respect of any of the holdings in the village, such application or suit shall be transferred to the court of the consolidation officer and any such application or suit filed between such date and the date on which the consolidation scheme is completed shall be transferred to the court of the consolidation officer.

(2) The consolidation officer shall, before completing the consolidation scheme, decide all such suits in accordance with the provisions of the Agra Tenancy Act, 1926, or of the Oudh Rent Act, 1886, as the case may be, or of any law for the time being in force unless for special reasons to be recorded in writing, he thinks that it is not expedient or necessary to decide all or any of such suits in which case he shall return all suits, which he thinks he should not decide, to the court from which they were received.

16. When the collector confirms a consolidation scheme he may, on the application of one or more of the proprietors, and notwithstanding anything in Chapter VII of the United Provinces Land Revenue Act, 1901, direct the consolidation officer or any assistant collector of the first Provision for subsequent partition.

class to partition the village and on such order the provisions of Chapter VII of the United Provinces Land Revenue Act, 1901, and of the rules made under section 234 of that Act shall apply to such partition.

## CHAPTER IV.

### APPEAL, REFERENCE AND REVISION.

**17.** No appeal and no application for review, reference or revision shall lie from any order passed under the provisions of this Act except as provided in this Act.

Appeals, etc., to be as allowed by Act.

**18.** An appeal shall lie to the collector from the following orders of the consolidation officer, namely :

First appeals.

(a) an order passed under the provisions of sub-section (1) of section 10, deciding an objection :

(b) an order passed under the provisions of sub-section (2) of section 12, regarding compensation ;

(c) an order passed under the provisions of the proviso to sub-section (1) of section 13, directing that the provisions of that sub-section shall apply with modifications to any particular case.

**19.** (1) No appeal to the collector shall be brought after expiration of sixty days from the date of the order submitting the consolidation scheme to the collector for confirmation.

Limitation for appeals.

(2) When a party desires to appeal against several orders which are appealable under section 17, he may do so in a single appeal.

**20.** The collection may call for and examine the record of any case decided by the consolidation officer or of any proceedings held by him, for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings ; and, if he is of opinion that the proceedings taken or any order passed by the consolidation officer should be varied, cancelled, or reversed, he shall refer the case with his opinion for the orders of the Board, and the Board shall thereupon pass such orders as it thinks fit.

**21.** The Board may call for the record of any case if the officer by whom the case was decided appears to have exercised a jurisdiction not vested in him by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity, and may pass such orders in the case as it thinks fit.

Power of collector to call for record and proceedings and reference to Board.

Power of Board to call for records and to revise orders.

**22.** Subject to the provisions of this Act, the provisions of Chapter IX and of sections 215 to 217 and section 220 of the United Provinces Land Revenue Act, 1901, shall apply to appeal, revision and other proceedings under this Act.

Procedure in proceedings under the Act.

CHAPTER V.

MISCELLANEOUS.

**23.** No person shall institute any suit or other proceeding in any civil court with respect to any matter arising out of consolidation proceedings or with respect to any other matter in regard to which a suit or application could be filed under the provisions of this Act.

Bar to civil court jurisdiction.

**24.** Subject to the provisions of this Act, the provisions of sections 4, 5, 9 to 18 and 22 and no others of the Indian Limitation Act, 1908, shall apply to suits and other proceedings under this Act.

Application of the Limitation Act.

**25.** (1) The consolidation officer shall, in accordance with rules made by the Provincial Government, determine the cost of consolidation and, in accordance with rules made by the Board, distribute such cost between the persons affected by the order of consolidation.

Costs.

(2) Any amount payable as costs under this section shall be recoverable as an arrear of land revenue.

**26.** The Provincial Government may appoint any assistant collector of the first class to perform in any local area the duties of a consolidation officer, or invest any assistant collector of the first class with the powers of a collector under this Act.

Powers.

**27.** No court fee shall be payable on any application made in any proceedings under the provisions of this Act.

Exemption from court fee.

**28.** The Board may make rules, consistent with the provisions of this Act :

Board's power to make rules.

(a) prescribing the particulars to be contained in any application filed under section 3 ;

(b) prescribing the circumstances in which the collector may direct under section 7 that an application for consolidation may be made when partition proceedings are pending or that an application for partition may be made when consolidation proceedings are pending ;

(c) prescribing the circumstances in which the collector should direct an assistant collector to make an order of consolidation or a consolidation scheme under the provisions of section 6 ;

(d) providing for the procedure to be followed by the consolidation officer or assistant collector in making a consolidation scheme and disposing of objections thereto ;

(e) for determining the valuation of the holdings and lands to be consolidated ;

- (f) for the guidance of the consolidation officer or assistant collector in respect of the transfer of encumbrances and leases ;
- (g) providing for attestation of records ;
- (h) prescribing fees to be paid to amins or surveyors for demarcation or survey work ;
- (i) generally for giving effect to the provisions of this Act

## APPENDIX E.

### (II)

CERTAIN PROVISIONS OF THE COURT FEES ACT ARE GIVEN BELOW  
FOR READY REFERENCE.

### The Court Fees Act, 1870.

(No. VII of 1870.)

*(As amended up to date in its application to the United Provinces.)*

### CHAPTER III.

6.—(1) Except in the Courts hereinbefore mentioned,<sup>1</sup> no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document ;

Provided that where such document relates to any suits, appeal or other proceeding under the Oudh Rent Act, 1886, the Agra Tenancy Act, 1926, or the United Provinces Land Revenue Act, 1901, the fee shall be three-quarters of the fee indicated in either of the said schedules except where the amount or value of the subject-matter of the suit, appeal or proceeding to which it relates exceeds Rs. 500 ;

Provided, further, that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act.

(2) Notwithstanding the provisions of sub-section (1), a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, but no such plaint or memorandum of appeal shall be acted upon unless the plaintiff or the appellant, as the case may be makes good the deficiency in court-fee within such time as may from time to time be fixed by the Court.

(3) If a question of deficiency in court-fee in respect of any plaint or memorandum of appeal is raised by an officer mentioned in section 24-A the Court shall, before proceeding further with the suit or appeal, record a finding whether the court-fee paid is sufficient or not. If the

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<sup>1</sup> Viz. the High Courts and the Courts of Small Causes at the Presidency Town.

Court finds that the court-fee paid is insufficient, it shall call upon the plaintiff or the appellant, as the case may be, to make good the deficiency within such time as it may fix, and in case of default shall reject the plaint or memorandum of appeal :

Provided that the Court may, for sufficient reasons to be recorded, proceed with the suit or appeal if the plaintiff or the appellant, as the case may be, gives security, to the satisfaction of the Court, for payment of the deficiency in court-fee within such further time as the Court may allow. In no case, however, shall judgment be delivered unless the deficiency in court-fee has been made good, and if the deficiency is not made good within such time as the Court may from time to time allow, the Court may dismiss the suit or appeal.

(4) Whenever a question of the proper amount of court-fee payable is raised otherwise than under sub-section (3), the Court shall decide such question before proceeding with any other issue.

(5) In case the deficiency in court-fee is made good within the time allowed by the Court, the date of the institution of the suit or appeal shall be deemed to be the date on which the suit was filed or the appeal presented.

(6) In all cases in which the report of the officer referred to in sub-section (3) is not accepted by the Court, a copy of the findings of the Court shall forthwith be sent to the Chief Inspector of Stamps.

**6-A.—**(1) any person called upon to make good a deficiency in court-fee may appeal against such order as if it were an order appealable under section 104 of the Code of Civil Procedure.

Appeal against order  
to pay court-fee.

The party appealing shall file with the memorandum of appeal, a certified copy of the plaint together with that of the order appealed against.

(2) In case an appeal is filed under sub-section (1), and the plaintiff does not make good the deficiency, all proceedings in the suit shall be stayed, and all interim orders made, including an order granting an injunction or appointing a receiver, shall be discharged.

(3) A copy of the memorandum of appeal shall be sent forthwith by the appellate court to the Chief Inspector of Stamps.

(4) If such order is varied or reversed in appeal, the appellate court shall, if the deficiency has been made good before the appeal is decided, grant to the appellant a certificate, authorizing him to receive back from the Collector such amount as is determined by the appellate court to have been paid in excess of the proper court-fee.

(5) The Court may make such order for the payment of costs of such appeal as it deems fit, and, where such costs are payable to the Government, they shall be recoverable as arrears of land revenue.



**6-B.—**(1) If the order of the Court passed under sub-section (3) of section 6 is at variance with the opinion of the officer by whom the question of deficiency in court-fees has been raised, the Chief Inspector of Stamps may, within three months from the date of receipt of such order, move, by an application in writing, the Court to which an appeal lies from a decree in the suit or appeal in which such order has been passed, for revision of such order.

(2) If such Court is of opinion that the proper court-fee has not been paid on the plaint or the memorandum of appeal to which such order relates, it shall record a declaration to that effect and determine the amount of deficiency in court-fee. No appeal shall lie from such order :

Provided that no such declaration shall be made until the party liable to pay the court-fee has had an opportunity of being heard.

(3) The Court, while recording a declaration under sub-section (2) may make such order for the payment of costs as it deems fit. Where such costs are payable to the Government, they shall be recoverable in the manner laid down in sub-section (4) for the recovery of deficiency in court-fee.

(4) When a declaration has been recorded under sub-section (2), the Court recording the same shall, unless the suit or appeal has come up in appeal before such Court, in which case the deficiency in court-fee shall be recovered in the manner laid down in sub-section (ii) of section 12, send forthwith a copy of such declaration to the Court which passed the order under sub-section (3) of section 6. Such Court shall, if the suit or appeal is still pending before it, follow the procedure prescribed in sub-section (3) of section 6. If the suit or appeal has already been disposed of, the Court shall forward a copy of such declaration to the Collector who shall recover the deficiency from the party concerned as if it were an arrear of land revenue.

**7.** The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :  
**Computation of fees payable in certain suits,**

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or other sums payable periodically)—according to the amount claimed :  
**For money.**

(v-B). In suits for possession of land between rival tenants and by tenants against trespassers—  
**Possessory suits between tenants**

according to the value of the subject-matter and such value shall be determined if such land is the land of

(a) a permanent tenure-holder or a fixed-rate tenant—

by multiplying by twenty the annual rent recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint ;

(b) an ex-proprietary or occupancy tenant—

by multiplying by two such rent in case of suits for possession of land between rival tenants, and by annual rent in suits by tenants against trespassers.

(c) any other tenant—by annual rent.

If no such rent is recorded in the Collector's register, the value shall be determined in the manner laid down in clause (c) of sub-section (v) of this section save that the multiple shall be that entered in clauses (a), (b) and (c) of this sub-section according as the class of tenancy affected is governed by clauses (a) or (b) or (c) of this sub-section.

(viii) In suits to set aside or to restore an attachment including To set aside or to suits to set aside an order passed under Order XXI, restore an attachment ; Rule 60, 61 or 62 of the Code of Civil Procedure,

according to half of the amount for which attachment was made, or according to half of the value of the property or interest attached, whichever is less.

*Explanation*—The value of the property or interest for the purposes of this sub-section, shall be the market-value which in the case of immovable property or interest in such property shall be deemed to be the value as computed in accordance with sub-section (v), (v A) or (v-B) as the case may be.

Between landlord (xi) In the following suits between landlord and tenant. and tenant :—

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- (cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord,
- (f) for abatement of rent,
- (g) for commutation of rent, and
- (h) for determination of rent—

according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint, except in the case of suits falling under clause (h) in which, according to twice the amount claimed by the plaintiff to be the annual rent.

13.—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351 (Order XLI, Rule 23) of

Refund of fee paid  
on Memorandum of  
Appeal.

the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

**14.**—Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

**15.**—Where an application for a review of judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the second schedule to this Act, no. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

**17**—(1) In any suit in which two or more separate and distinct causes of action are joined, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act if separate suits were instituted in respect of each such cause of action :

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, to order separate trials.

(2) When more reliefs than one based on the same cause of action are sought in the alternative the fee shall be paid according to the value of the relief in respect of which the largest fee is payable

**19.**—Nothing contained in this Act shall render the following documents chargeable with any fee :—

(i) Power-of-attorney to institute or defend a suit when executed by an officer, warrant officer, non-commissioned officer or private of Her Majesty's Army not in Civil employment.

(iii) Written statement not being one mentioned in article 2A, schedule 1, nor one containing a counter-claim, set-off, or a prayer other than a prayer for instalments or relating to costs of the suit.

(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

28.—No document which ought to bear a stamp under this Act shall

Stamping of documents inadvertently received. be of any validity unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct, and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

### SCHEDULE I.

*Ad valorem fees.*

Number.		Proper fee.
1. Complaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	Where such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to three hundred rupees.	Twelve annas.

Number.		Proper fee.
1. Plant, etc.— <i>contd.</i>	When such amount or value exceeds three hundred rupees, for every ten rupees, or part thereof, in excess of three hundred rupees, up to five hundred rupees.	Fourteen annas.
	When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees, up to one thousand rupees.	One rupee four annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Seven rupees eight annas. سبعة اشترين
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.

Number.		Proper fee.
1. <i>Plaint, etc.—contd.</i>	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty-seven rupees eight annas.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.		The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.		One half of the fee leviable on the plaint or memorandum of appeal.

Number.		Proper fee.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees :	Six annas.
	(b) If such amount or value exceeds fifty rupees.	Twelve annas.
7. Copy of a decree or order having the force of a decree.	When such judgment or order is passed by a High Court.	One rupee eight annas.
	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Twelve annas
	(b) If such amount or value exceeds fifty rupees.	One rupee eight annas.
	When such decree or order is made by a High Court.	Four rupees.

Number.		Proper fee.
8. Copy of any document liable to stamp duty under the Indian Stamp Act, II of 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(a) When the stamp duty chargeable on the original does not exceed eight annas.  (b) In any other case.	The amount of the duty chargeable on the original.  Twelve annas.
8A. A copy of a power-of-attorney when filed in any suit or proceeding.		Twelve annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.

Table of rates of ad valorem court-fee leviable on the institution of suits.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee under the Act of 1870.	Proper fee under the Act as amended up to date.
Rs.	Rs.	Rs. a. p.	Rs. a. p.
...	5	0 6 0	0 6 0
5	10	0 12 0	0 12 0
10	15	1 2 0	1 2 0



When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees under the Act of 1870.	Proper fee under the Act as amended up to date.
Rs.	Rs.	Rs. a. p.	Rs. a. p.
15	20	1 8 0	1 8 0
20	25	1 14 0	1 14 0
25	30	2 4 0	2 4 0
30	35	2 10 0	2 10 0
35	40	3 0 0	3 0 0
40	45	3 6 0	3 6 0
45	50	3 12 0	3 12 0
50	55	4 2 0	4 2 0
55	60	4 8 0	4 8 0
60	65	4 14 0	4 14 0
65	70	5 4 0	5 4 0
70	75	5 10 0	5 10 0
75	80	6 0 0	6 0 0
80	85	6 6 0	6 6 0
85	90	6 12 0	6 12 0
90	95	7 2 0	7 2 0
95	100	7 8 0	7 8 0
100	110	8 4 0	8 4 0
110	120	9 0 0	9 0 0
120	130	9 12 0	9 12 0
130	140	10 8 0	10 8 0
140	150	11 4 0	11 4 0
150	160	12 0 0	12 0 0
160	170	12 12 0	12 12 0
170	180	13 8 0	13 8 0
180	190	14 4 0	14 4 0
190	200	15 0 0	15 0 0
200	210	15 12 0	15 12 0
210	220	16 8 0	16 8 0
220	230	17 4 0	17 4 0
230	240	18 0 0	18 0 0
240	250	18 12 0	18 12 0
250	260	19 8 0	19 8 0
260	270	20 4 0	20 4 0
270	280	21 0 0	21 0 0
280	290	21 12 0	21 12 0
290	300	22 8 0	22 8 0
300	310	23 4 0	23 6 0
310	320	24 0 0	24 4 0
320	330	24 12 0	25 2 0
330	340	25 8 0	26 0 0
340	350	26 4 0	26 14 0
350	360	27 0 0	27 12 0
360	370	27 12 0	28 10 0
370	380	28 8 0	29 8 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee under the Act of 1870.	Proper fee under the Act as amended up to date.
Rs.	Rs.	Rs. a. p.	Rs. a. p.
380	390	29 4 0	30 6 0
390	400	30 0 0	31 4 0
400	410	30 12 0	32 2 0
410	420	31 8 0	33 0 0
420	430	32 4 0	33 14 0
430	440	33 0 0	34 12 0
440	450	33 12 0	35 10 0
450	460	34 8 0	36 8 0
460	470	35 4 0	37 6 0
470	480	36 0 0	38 4 0
480	490	36 12 0	39 2 0
490	500	37 8 0	40 0 0
500	510	38 4 0	41 4 0
510	520	39 0 0	42 8 0
520	530	39 12 0	43 12 0
530	540	40 8 0	45 0 0
540	550	41 4 0	46 4 0
550	560	42 0 0	47 8 0
560	570	42 12 0	48 12 0
570	580	43 8 0	50 0 0
580	590	44 4 0	51 4 0
590	600	45 0 0	52 8 0
600	610	45 12 0	53 12 0
610	620	46 8 0	55 0 0
620	630	47 4 0	56 4 0
630	640	48 0 0	57 8 0
640	650	48 12 0	58 12 0
650	660	49 8 0	60 0 0
660	670	50 4 0	61 4 0
670	680	51 0 0	62 8 0
680	690	51 12 0	63 12 0
690	700	52 8 0	65 0 0
700	710	53 4 0	66 4 0
710	720	54 0 0	67 8 0
720	730	54 12 0	68 12 0
730	740	55 8 0	70 0 0
740	750	56 4 0	71 4 0
750	760	57 0 0	72 8 0
760	770	57 12 0	73 12 0
770	780	58 8 0	75 0 0
780	790	59 4 0	76 4 0
790	800	60 0 0	77 8 0
800	810	60 12 0	78 12 0
810	820	61 8 0	80 0 0
820	830	62 4 0	81 4 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee under the Act of 1870.	Proper fee under the Act as amended up to date.
Rs.	Rs.	Rs. a. p.	Rs. a. p.
830	840	63 0 0	82 8 0
840	850	63 12 0	83 12 0
850	860	64 8 0	85 0 0
860	870	65 4 0	86 4 0
870	880	66 0 0	87 8 0
880	890	66 12 0	88 12 0
890	900	67 8 0	90 0 0
900	910	68 4 0	91 4 0
910	920	69 0 0	92 8 0
920	930	69 12 0	93 12 0
930	940	70 8 0	95 0 0
940	950	71 4 0	96 4 0
950	960	72 0 0	97 8 0
960	970	72 12 0	98 12 0
970	980	73 8 0	100 0 0
980	990	74 4 0	101 4 0
990	1,000	75 0 0	102 8 0
1,000	1,100	80 0 0	110 0 0
1,100	1,200	85 0 0	117 8 0
1,200	1,300	90 0 0	125 0 0
1,300	1,400	95 0 0	132 8 0
1,400	1,500	100 0 0	140 0 0
1,500	1,600	105 0 0	147 8 0
1,600	1,700	110 0 0	155 0 0
1,700	1,800	115 0 0	162 8 0
1,800	1,900	120 0 0	170 0 0
1,900	2,000	125 0 0	177 8 0
2,000	2,100	130 0 0	185 0 0
2,100	2,200	135 0 0	192 8 0
2,200	2,300	140 0 0	200 0 0
2,300	2,400	145 0 0	207 8 0
2,400	2,500	150 0 0	215 0 0
2,500	2,600	155 0 0	222 8 0
2,600	2,700	160 0 0	230 0 0
2,700	2,800	165 0 0	237 8 0
2,800	2,900	170 0 0	245 0 0
2,900	3,000	175 0 0	252 8 0
3,000	3,100	180 0 0	260 0 0
3,100	3,200	185 0 0	267 8 0
3,200	3,300	190 0 0	275 0 0
3,300	3,400	195 0 0	282 8 0
3,400	3,500	200 0 0	290 0 0
3,500	3,600	205 0 0	297 8 0
3,600	3,700	210 0 0	305 0 0
3,700	3,800	215 0 0	312 8 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper-fee under the Act of 1870.	Proper fee under the Act as amended up to date.
Rs.	Rs.	Rs. a. p.	Rs. a. p.
3,800	3,900	220 0 0	320 0 0
3,900	4,000	225 0 0	327 8 0
4,000	4,100	230 0 0	335 0 0
4,100	4,200	235 0 0	342 8 0
4,200	4,300	240 0 0	350 0 0
4,300	4,400	245 0 0	357 8 0
4,400	4,500	250 0 0	365 0 0
4,500	4,600	255 0 0	372 8 0
4,600	4,700	260 0 0	380 0 0
4,700	4,800	265 0 0	387 8 0
4,800	4,900	270 0 0	395 0 0
4,900	5,000	275 0 0	402 8 0

## SCHEDULE II.

## FIXED-FEES

Number.		Proper fee
1. Application petition.	or (b) or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act; or to deposit in Court revenue or rent : or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.	Twelve annas.

Number.		Proper fee.
5. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	(c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act.	One rupee eight annas.
	(d) When presented to the Board of Revenue for revision of a judgment or order.	Three rupees.
	(e) When presented to a High Court ;	Three rupees
	...	Twelve annas.
10. Mukhtarnama or Vakalatnama.	When presented for the conduct of any one case—	...
	(a) to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number ;	Twelve annas.

Number.		Proper fee.
11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented.	(b) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a division, not being the Chief Revenue or Executive Authority ;	One rupee eight annas.
	(c) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Three rupees.
	(a) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than a Commissioner of the Division or Chief Controlling Revenue or Executive authority ;	Twelve annas.
	(b) to a Commissioner of the division ;	Two rupees.
	(c) to a High Court or to a Chief Controlling Executive or Revenue Authority.	Three rupees.

## APPENDIX F. KUMAUN TENANCY RULES.

### PRELIMINARY.

Short title. **Rule 1**—These rules shall be called the Kumaun Tenancy Rules, 1918.

**Rule 2**—In these rules, unless there is anything repugnant in the subject or context, “Board” “Mahal” “Malguzar” “Minor” and “Revenue Court” have the meanings respectively which they have in United Provinces Land Revenue Act 1901 as extended to Kumaun; and “tenant” included a *pacca* and a *kutchha khalkar*.

### Jurisdiction of Courts.

**Rule 3**—All suits and applications of the nature specified in the first schedule attached to these rules shall be heard and determined by the revenue courts; and except as otherwise provided by Rules 4 and 5 no court other than a revenue court shall take cognizance of any dispute or matter in respect of which any such suit or application might be brought or made.

Reservation of jurisdiction in respect of certain matters to revenue courts.

Provision for determination of certain questions of jurisdiction and proprietary title arising in revenue courts.

**Rule 4-(1).**—Whenever a question or issue to the effect whether—

(a) the case is cognizable by a civil or by a revenue court, or,

(b) a person is proprietor of any measured or assessed land is to be determined by a revenue court of first instance in any suit or proceeding, and whenever such question or issue is to be determined as an original question or issue by an appellate court in the course of an appeal, the revenue court shall, before determining any other issue or question arising in the case, determine such issue in accordance with the procedure laid down in the Code of Civil Procedure for the trial of original civil suits, and shall embody its decision thereon as an order or decree, as the case may be.

(2) Such order or decree shall be deemed an original decree of a district judge, subordinate judge or munsif having jurisdiction in respect of the land in question, according as the revenue court framing such order or decree is the court of a commissioner, a collector or an assistant collector respectively, and except as otherwise provided in sub-rule (4) shall be subject to appeal as such.

(3) The revenue court shall thereupon ask the parties if either of them desires to appeal from such order or decree, and shall record their reply to such question.

(4) If neither of the parties expresses a desire to appeal, the order or decree shall be final and the court shall proceed with the case.

(5) If either of the parties expresses a desire to appeal the revenue court shall stay further proceedings in the suit until the period of appeal has expired or, in the event of an appeal being filed, until the decision of the first appellate court thereon, and shall then proceed to dispose of the suit in accordance with such decision.

(6) In the event of such decision being reversed subsequently to the disposal of the suit by the revenue court under sub-rule (5) on further appeal, that revenue court or any other revenue court disposing of the suit in appeal may, on the application of a party, review its judgment, so as to make it conform with the final decision on such issue.

(7) Provided that nothing in this rule shall be construed to empower a civil court to decide any other question arising in the suit than such question of proprietary title or of jurisdiction.

*Explanation.*—Original question or original decree in this and the next rules means a question not previously raised and an issue not previously framed in the case.

**Rule 5—(1)** Whenever an issue, whether the defendant holds agricultural land as the tenant of the plaintiff or of a person in possession from the plaintiff is to be determined by a civil court of first instance in any suit or proceeding, and whenever such issue is to be determined as an original issue by an appellate civil court in the course of an appeal, the civil court shall determine such issue as a preliminary issue in accordance with the procedure prescribed for the trial of rent suits, and shall embody its decision thereon in a decree.

(2) Such decree shall be deemed an original decree of a commissioner, collector, or assistant collector having jurisdiction in respect of the land in question according as the civil court framing such decree is the court of a district judge, a subordinate judge or a munsif, respectively, and, except as otherwise provided in sub-rule (4), shall be subject to appeal as such.

(3) The civil court shall, thereupon, ask the parties, if either of them desires to appeal from such decree, and shall record their reply to such question.

(4) If neither of the parties expresses a desire to appeal the decree shall be final and the court shall proceed with the case.

(5) If either of the parties expresses a desire to appeal, the civil court shall stay further proceedings in the suit until the period of appeal has expired or, in the event of an appeal being filed, until the appeal has been finally decided and shall then proceed to dispose of the suit in accordance with the final decision of such issue.

(6) Provided that nothing in this rule shall be construed to empower a revenue court to decide any other question arising in the suit than such question of the status of the defendant.



**Rule 6.**—Suits, appeals and applications for revision shall be instituted within the period of limitation prescribed in the First Schedule.

**Rule 7.**—The provisions contained in sections 4, 5, 6, 7, 9 and 10 and in part III of the Indian Limitation Act, 1908 shall apply to any suit, appeal or application under these rules.

### Grades of Courts

**Rule 8.**—An Assistant Collector of the second class shall have power to dispose of all suits and applications shown in the 6th column of the first schedule attached to these rules as triable by such Assistant Collector.

**Rule 9.**—An Assistant Collector of the first class shall have power to dispose of all suits and applications specified in the first Schedule except those included in item 25 thereof.

**Rule 10.**—A Collector, in addition to the powers specifically conferred on him by these rules, shall have all the powers conferred on an Assistant Collector of the first class.

**Rule 11.**—(1)—An Assistant Collector may sit at any place within the limits of the district to which he is appointed.

(2) Any other court may sit at any place within the local limits of its jurisdiction.

### Appeals.

**Rule 12.**—Save as otherwise provided in Rule 4, an appeal from a decree or order of an Assistant Collector shall lie to the Collector.

**Rule 13.**—Save as otherwise provided in Rule 4, an appeal shall lie to the Commissioner from an original decree or order of a Collector; provided that the amount or value of the subject-matter of the suit exceeds one hundred rupees.

**Rule 14.**—Save as otherwise provided in Rule 4, an appeal shall lie to the Commissioner from an appellate decree or order of a Collector on any of the grounds specified in Section 100 of the Code of Civil Procedure; provided that—

(a) the amount or value of the subject-matter of the suit in the court of the first instance exceeds a hundred rupees, and

(b) the amount or value of the subject-matter in dispute in appeal to the Commissioner exceeds the same sum.

**Review and Revision.**

**Rule 15.**—The Board, on the application of a party to the case or on its own motion, may review its judgment in any case, and may rescind, alter or confirm any decree or order made in pursuance of such judgment.

**Rule 16.**—Every other court shall be competent to review its judgment in accordance with the provisions of Section 114 and Order XLVII of the first Schedule of the Code of Civil Procedure.

**Rule 17.**—(1) The Board may, on the application of a party to the case, or on report made, or on its own motion, call for the record of any case which has come before any subordinate revenue court in which the court appears to have exercised a jurisdiction not vested in it by law or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order thereon as it thinks fit.

(2) Provided that the Board shall not exercise the power conferred by sub-rule (1) in respect of any decree or order passed under sub-rule (1) of rule (4).

**Rule 18.**—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its or his own motion without such notice, the Board, or the Commissioner or the Collector within the limits of his district, or an Assistant Collector in charge a sub-division within the limits of his sub-division may at any stage,—

(a) transfer any case pending before it or him for trial or disposal to any court subordinate to it or him and competent to try or dispose of the same, or

(b) withdraw any case pending in any court subordinate to it or him, and

(i) try to dispose of the same, or

(ii) Transfer the same for trial or disposal to any court subordinate to it or him and competent to try or dispose of the same, or,

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-rule (1), the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point it was transferred or withdrawn.

(3) For the purposes of this section every other Assistant Collector of a sub-division shall be subordinate to the Assistant Collector in charge of the sub-division.

**Procedure.**

**Rule 19.**—(1) When in any suit brought under these rules by a landholder against a tenant for arrears of rent the tenant pleads that he actually and in good faith has paid up to the date of institution of the suit the rent of his holding to some third person, that third person shall be made a party to the suit, and the question of the actual payment of rent in good faith by the tenant to him or to a person on his behalf shall be inquired into.

(2) If the question is determined in favour of the tenant, the suit shall be dismissed.

(3) The decision of the court on such question shall not affect the right of any person entitled to the rent of the holding to establish his title thereto, by suit in the civil court.

**Rule 20.**—The provisions of the Code of Civil Procedure, 1908, as extended to Kumaun shall, so far as they are applicable and consistent with the provisions of these rules, apply to all suits and proceedings under these rules.

**Rule 21.**—In addition to the particulars required in Order VII, Rules 1, 2, 3, 4, 5, and 6 of the Code of Civil Procedure, 1908, to be specified in the plaint, the plaint shall contain the following particulars namely :—

(a) the name of the village and of the pargana and patti in which the land in question is situated ;

(b) If the suit is for the recovery of an arrear of rent other than the yearly rent of the land, the amount, if any, received on account of the year or years for which the claim is made, the amount in arrear and the time in respect of which it is alleged to be due.

**Rule 22.**—(1) A court may if it thinks fit, itself make a local investigation instead of issuing a commission under Order XXVI, Rule 9 of the First Schedule of the Code of Civil Procedure, 1908.

(2) When the court itself makes a local investigation the provisions of Order XXVI, Rule 10 of the said Code, with respect to the recording of evidence shall apply to the court, and any observations which the court thinks fit to record on its proceedings shall be received as evidence in the suit.

**Miscellaneous**

**Rule 23** --In suits by landholders for ejectment under item 20 of the first schedule, the court may, if the tenant is entitled under any law or custom to compensation for improvements, make the decree for ejectment subject to the payment by the decree-holder of such compensation.

**Rule 24.**—In a suit to recover an arrear of rent the court shall not allow a set-off against the claim, except such amount as is due to the defendant on an unexecuted decree under these rules against the plaintiff.

**Rule 25**—A decree for arrears of rent may be executed, if the arrears remain unsatisfied at the end of the agricultural year in which the decree is passed, by the ejectment of the tenant upon application made to a court competent to entertain the application under Rules 8, 9, and 10.

**Rule 26**—If a co-sharer or tenant from whom any revenue or rent is due in respect of the land held or cultivated by him tenders the full amount of that revenue or rent at the usual place of payment to the person authorised to receive it, and that person does not accept the amount and forthwith give a receipt in full therefor, the co-sharer or tenant may, without any suit having been instituted against him, deposit the amount in the court of a Collector or Assistant Collector to the credit of the person authorised to receive it.

**Rule 27.**—(1) The court shall receive the deposit on the written application of the co-sharer or tenant or his recognised agent, and on the applicant's making a declaration in the form set forth in the Second Schedule attached to these rules, or as near thereto as circumstances will admit, the court shall give him a receipt for the deposit.

(2) The declaration shall be verified in the manner prescribed for the verification of plaints by Rule 15 of Order VII of the Code of Civil Procedure, and shall be signed by the person making it.

(3) Upon receiving the deposit, the court shall issue to the person to whose credit it has been paid a notice in the form set forth in the Third Schedule attached to these Rules.

(4) If the person to whose credit the deposit has been paid, or his recognised agent appears and applies for it, court shall cause it to be paid to him. The application may be on plain paper.

(5) If such person or agent fails to appear, and apply for the deposit, the deposit shall be repaid to the depositor upon his application.

**Rule 28.**—For the purposes of the Court Fees Act, 1870 the amount of the fee payable in the suits and other proceedings specified in the First Schedule shall be computed as prescribed in the fifth column thereof.

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## THE FIRST SCHEDULE.

## GROUP (A).—SUITS.

Serial number.	Description of suit	Period of limitation.	Time from which period begins to run.	Proper court-fee.	Whether triable by an assistant collector of the 2nd class.
1	By a landholder or tenant for adjudication as to price of crops or other produce which the landholder has elected to purchase upon his ejection in execution of a decree	Thirty days ...	When the ejection takes place.	As in the Court Fees Act, 1870.	Yes.
2	By a tenant for damages on account of refusal by landholder to deliver receipt for rent paid.	Three months	Date of refusal	Do. ...	Yes.
3	By a tenant on the ground of rent or produce exacted by the landholder in excess of lawful amount.	Do. ...	Date of exaction.	Do. ...	Yes.
4	By a tenant for damages on account of illegal ejection by landholder.	Six months ...	Date of ejection or where suit has been instituted for recovery of holding, date of final decree in such suit.	Do. ...	No
5	By a tenant for the crops or for the value of crops at the time of ejection.	Six months ...	Date of ejection or where suit has been instituted for recovery of holding, date of final decree in such suit.	As in the Court-Fees Act, 1870.	Yes.
6	By a tenant for recovery from the landholder of value of improvements.	Do. ...	Date of ejection or surrender.	Do. ...	No.

Serial number	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fee.	Whether triable by an assistant collector of the 2nd class
7	For recovery or damages by reason of the exaction of excess revenue.	One year ...	Date of exaction	As in the Court Fee Act, 1870.	Yes.
8	By a tenant for recovery of land from which he has been wrongfully dispossessed by landholder.	Do. ...	Date of dispossession.	Do. ...	No
9	For cancellation of illegal transfer or surrender or sub-lease or agreement to transfer, surrender or to sub-let.	One year ...	Date when transfer or agreement becomes known.	Do. ...	No.
10	By a landholder or the <i>punch khaikars</i> for arrears of rent, or where rent is paid in kind for the money equivalent of such rent.	Three years ...	Last day of September of the revenue year in which arrears become due.	Do. ...	Yes.
11	By malguzar for arrears of rent or revenue, cesses, village expenses, or other dues payable through him by co-sharers whom he represents, or for recovery from a joint malguzar of rent or revenue, cesses, village expenses or other dues paid on his behalf.	Three years ...	Last day of September of the revenue year in which arrears become due	Do. ...	Yes.
12	By a co-sharer against a malguzar or co-sharers for rendering and settlement of accounts and/or for his share of the profits of a village or part of a village.	Do. ...	Date when the arrears are paid : or to which the accounts refer.	Do	Yes.
13	By a muafidar or assignee of revenue for rendering and settlement of accounts and for arrear of revenue due to him as such.	Do. ...	Do. ...	Do.	Yes.

Serial number.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fee	Whether triable by an assistant collector of the 2nd class
14	By a co-sharer for recovery from a co-sharer of arrears of rent, revenue, cesses, village expenses or other dues paid by the plaintiff on the defendant's behalf.	Three years ...	Date when the arrears are paid.	As in the Court Fees Act, 1870	Yes.
15	By a tenant against an other tenant or person claiming to be a tenant in respect of any matter relating to a holding.	Do ...	Date when cause of action arises.	Do. ...	No.
16	By or on behalf of the <i>panch khaskars</i> of a <i>pucca khaskari</i> village against a landholder on the ground of infringement of their common rights.	Do. ...	Date of overt act of infringement by landholder.	Do. ...	No.
17	By a grantor for re-emption of a rent-free grant.	Twelve years	Date of grantee's refusal to comply with lawful notice to quit.	According to annual letting value of the land as estimated by plaintiff.	No.
18	By a grantor for assessment to rent of a rent-free grant	Do. ...	Date of grantee's refusal to pay rent.	Do. ...	No.
19	By a landholder, <i>malguzar</i> , or co-sharer for reordering or settlement of accounts or recovery of money or papers, against an agent employed to manage his land or collect revenue or rent or against a surety of such agent	During continuance of agency and one year thereafter.	...	As in the Court Fees Act, 1870.	Yes.
20	By a landholder for ejectment of tenant.	During tenancy.	...	Do. ...	No.

Serial number.	Description of suit.	Period of limitation	Time from which period begins to run.	Proper court-fee.	Whether triable by an assistant collector of the 2nd class.
21	For determination of— (a) the name and description of the tenant of the holding ;  (b) the class to which the tenant belongs ;  (c) the situation, area, number of plots or boundaries of the holding ;  (d) the rent payable in respect of the holding whether payable in cash or kind ;  (e) any other incident of tenancy ;	None ...	None ...	Eight annas	No.
22	By a tenant for a lease.	None ...	None ...	Eight annas.	No.
23	By a landholder for a counterpart of a lease.	Do. ...	Do. ...	Do. ...	No.

## GROUP (B).—APPLICATIONS.

24	For review of judgment.	90 days ...	Date of decree or order	Do. ...	Yes
25	For revision.	None. ...	None ...	Where value of subject-matter in dispute does not exceed Rs. 25, Rs 2 and in other cases fee leviable on memorandum of appeal.	No.



Serial number.	Description of suit.	Period of limitation	Time from which period begins to run.	Proper court-fee.	Whether triable by an assistant collector of the 2nd class
26	For payment of rent or revenue deposited in court.	Six months	Receipt of notice under rule 27(3).	Eight annas.	Yes.
27	For refund of rent or revenue deposited in court.	Three years ...	Date of deposit.	Ditto ...	Yes.
28	For execution of any decree under these rules.	Do. ...	Date of final decree.	As in the Court Fees Act.	Yes.
29	For ejectment on the ground of a decree for arrears of rent remaining unsatisfied at the end of the agricultural year.	Do. ...	Date of final decree.	Ditto. ...	No.
30	For deputation of officer to make division estimate or appraisement of produce or crop.	None ...	None ...	Eight annas	Yes
31	For permission to deposit rent or revenue.	None ...	None ...	Eight annas	Yes.
32	For service of a notice of Surrender.	Do. ...	Do. ...	Do. ...	Yes.

## GROUP (C) — APPEALS.

33	To a collector ...	30 days ...	Date of decree or order appealed against.	As in the Court Fees Act, 1870	No.
34	To a commissioner.	60 days ...	Ditto. ...	Ditto. ...	No.
35	To a district judge or the subordinate judge of Garhwal.	Do. ...	Do. ...	Do.	No.
36	To the High Court.	90 days ...	Ditto. ...	Ditto. ...	No.

## THE SECOND SCHEDULE.

DECLARATION OF TENANT DEPOSITING REVENUE OR RENT IN COURT.<sup>1</sup>

[See Rule 27 (1).]

I, A. B. of \_\_\_\_\_, etc., solemnly declare that I did personally (or by my agent C. D.) on the \_\_\_\_\_ day of \_\_\_\_\_ tender payment to E. F. at \_\_\_\_\_ [the place where the (revenue or) rent of the lands at \_\_\_\_\_ (held or) cultivated by me under (or from or jointly with) the said E. F. is usually payable] of the sum of rupees \_\_\_\_\_ as and for the whole amount due from me in respect of the (revenue or) rent of the said lands from the month of \_\_\_\_\_ to the month \_\_\_\_\_ both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the sum so tendered). And I declare that, to the best of my belief, the sum of rupees \_\_\_\_\_ so tendered, and which I now desire to pay into court, in the full amount which I owe to the said E. F. on account of the (revenue or) rent of the said lands. I \_\_\_\_\_, the person named in the above declaration, do declare that what is stated therein is true to the best of my information and belief.

## THE THIRD SCHEDULE.

NOTICE TO LANDLORDS.<sup>2</sup>

[See Rule 28 (3).]

Court of the \_\_\_\_\_ of \_\_\_\_\_  
 Dated \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
 To E. F. of \_\_\_\_\_, etc.

With reference to the written declaration you are hereby informed that the sum of rupees \_\_\_\_\_ therein mentioned is now in deposit in this court, and that the above sum will be paid to you or your recognised agent on application within six months.

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<sup>1</sup> If this declaration is made by an agent it must be altered accordingly.

<sup>2</sup> This is to be by endorsement on a copy of the declaration under the second Schedule made by the person paying the money into court.

## APPENDIX G.

## Certain Customary Rights.

## A.—ABADIS.

1. **In villages without abadi**—In most villages, there is an *abadi* or tract or tracts of land set apart for the residence of cultivators, and sometimes as in *qashahs*, of others, while there are also villages, popularly called *bechiragi* or *pahikashit*, without any *abadi* land, which are cultivated wholly by non-residents. No cultivator, much less any other person, has any right to reside in the latter class of villages, or to erect buildings for such purposes : and should one do so without the landlord's consent, he is liable to be turned out as a trespasser. Should the landholder permit a cultivator to put up a building in a *bechiragi* village, the rights of the parties will be regulated by the law of license, i.e., sections 52 to 64 of the Easements Act. Such a license is not transferable, so that the person to whom permission is given may build a house in such a village and reside there, but cannot transfer either the right to build or the right of residence to anyone. Probably he can sell the *malba* or building materials to be removed at once. He cannot let or mortgage the building with possession, but if he can sell the materials he can also pledge them without possession. A transferee of the grantor of the license is not bound by it, so that on a sale of such a village, the license stands revoked, and should the new zamindar insist upon it, the licensee must quit the building and remove the materials. The grantor of a license (but not his transferee) cannot revoke it, when—

(a) it is coupled with a transfer of property and such transfer is in force ;

(b) the licensee acting upon the license has executed a work of a permanent character, and incurred expense in the execution. [Section 60 Easements Act.]

Clause (a) will apply to cases where a zamindar grants a lease of the village or of any part thereof and at the same time permits the lessee to reside in it. So long as the lease lasts, the license cannot be revoked by the grantor himself, though it may be by his transferee.

It is doubtful whether a mud hut, such as one ordinarily finds in many villages, can be called a work of a permanent character within the meaning of clause (b). In *Nazirullah v. Azimullah*,<sup>1</sup> it was held to be such a work. Substantial *kucha* or *pucca* buildings certainly come within the meaning of that expression.

Where a license to build and reside in a *bechiragi* village is granted to a person as a cultivator or as holding any other character, it stands revoked as soon as the licensee ceases to be a cultivator or to hold such character. [S. 62 (g), Easements Act.]

2. In villages with abadi.—To clearly understand this part of the subject, a little dive into history will not be out of place. Regulation II of 1795, sections 3 and 4, enjoined proprietors in the province of Benares (the four sircars of Benares, Mirzapur, Ghazipur and Jaunpur) to whom the blessings of the Permanent Settlement had been extended by Regulation I of the same year, to collect from the raiyats rents according to *hukumnamas* of the 25th June and 1st July, 1788, one of the articles of which incorporated cesses with rent and enacted that the rent was to be *bilnukta*, and no other impost was to be taken from them (the raiyats). This was further insisted upon by Regulation LI of the same year, and again it was ordered that the leases to be granted to raiyats should be for *bilnukta* rent, *i. e.*, of rent and cesses combined, and 'exclusive of that neither a *daam* or *dirham* shall be taken'. On the acquisition of other parts of the North-Western Provinces, under the name of Ceded and Conquered Provinces during the years 1801 to 1803, the Regulations in force in Benares were, with slight modifications, experimentally introduced as the law of these tracts. By proclamations, issued for the Ceded Provinces on 14th July, 1802, and for the Conquered Provinces on 11th July, 1805, provisions were made similar to those in force in Benares for the consolidation of cesses with rent. The inclusion of cesses in the rent was insisted upon by Regulation V of 1812. Probably these rules were not strictly enforced for we find in section 9 of Regulation VII of 1822, Collectors enjoined to prepare a record of the rates per *bigah* of each description of land demandable from resident raiyats, and the respective shares of the *sadr malguzar*, or other manager, and the cultivator, in lands cultivated under *kunkut*, *batai*, or similar engagements, with a distinct specification of all cesses or extra collections made by the *malguzar* or village manager or others "it being understood and declared that all decisions on the demands of the zamindars shall hereafter be regulated by the rates of rent...avowed and ascertained at the settlement and recorded in the Collector's proceedings until distinctly altered by mutual agreement or after full investigation in a regular suit, and all cesses or collections not avowed and sanctioned, nor taken into account in fixing the Government *Jama*, shall be illegal and unauthorised, unless now or hereafter specially sanctioned by Government." This rule against the levy of cesses not sanctioned by Government has been the law ever since. Section 66 of Act XIX of 1873, enacted that all cesses payable by tenants on account of the occupation of land assessed to revenue and taken into account in such assessment shall be consolidated with the rent, and that Settlement Officers should prepare a list of all other cesses levied in accordance with village custom and sanctioned by the Local Government, and no cesses not so recorded "shall be enforced in any Civil or Revenue Court." Section 56 of Local Act No. III of 1901, the Land Revenue Act, prescribes that all cesses which are payable by tenants on account of the occupation of land and which are of the nature of rent payable in addition to the rent of tenants, shall be recorded by the Record Officer (when revising a settlement) under the appellations by which they are known, and cesses not so recorded shall not be recoverable in any Civil or Revenue Court ;

and section 86 of the same Act orders the preparation by the Settlement Officer of a list of all other cesses levied according to village custom and sanctioned by the Local Government and prohibits any suit in respect of any cesses not so recorded. It also prescribes any alteration or addition to this list during the currency of a settlement.

It will be evident from this historical sketch, that zamindars could not and cannot recover rent for *abadi* sites occupied by resident tenants under the name of cesses. It will be noticed that two classes of cesses are contemplated, viz., those in the nature of rent, and payable by tenants for the occupation of land, and those outside this category but leviable according to village custom. It seems that the current Land Revenue Act has abrogated the rule of consolidating cesses of the first description with the rent. Neither class is recoverable by suit unless it has been recorded. As "land" means agricultural land the first class does not comprise rents for *abadi* sites, which are also outside the second class. The difference between cess and rent was pointed out by Blair, J., in *Abdul Hai v. Nathu*<sup>1</sup> thus: "the primary notion of a cess is a payment, not for the benefit of the landlord, but a payment for some purpose of public convenience, such as sanitation, police and the like." This is true of the second class of cesses, but has no application to the first class, and the learned Judge felt the difficulty when he said: "It would appear that the Land Revenue Act of 1901 has attributed to the word cess a meaning quite different from that which ordinarily attached to it. It speaks of cess as something payable by tenants on account of the occupation of agricultural land. I confess I should like to examine some person competent to answer as to what they mean by the word cess in that Act" Probably the rate levied for the payment of patwaris, kanungos, etc., or the local rate under Act III of 1878, etc., is meant.

That the learned Judge was not quite correct in his conception of cesses (the particular impost in the case before him was called *Mootahurefa* and claimed from a weaver who resided in the village but did not cultivate any land there will appear from Chapter IX of Part II of the Historical and Statistical Memoirs of the Ghazipur district, by Wilton Oldham (Edit. of 1876, p. 194). In the taxes there mentioned two may be noted here, namely *khergui* and *ghurdwaree*, sometimes called *khana shumaree* and *mutahurefa*. *Khergui* was a loom tax upon weavers. *Ghurdwaree* was a tax levied on shop keepers or dealers of various denominations, supposed to be in lieu of ground rent for their houses and shops. It was not so much a house as a shop tax and was confined to three or four professions. They were levied from the persons liable to them by village renters, who paid them to the Amils, and they to the Raja of Benares. This continued up to 1788-89, in which year these taxes were separated from the collection of village leases, and realised by the Amils of respective districts as *amanees* rates. *Khergui* was abolished on the 11th of February, 1791. In October, 1835, *Ghurdwaree* was abolished in the Benares district and later on in the Ghazipur district. *Mootahurefa* was thus more in the nature of cess than rent.

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<sup>1</sup> 24 A. W. N. 204—1 A. L. J. 537.

*Purjoti* or ground rent, though somewhat allied to, is quite distinct from, *Ghurwaree*. Literally, it means payments made by *purjās* or ryots. It is the rent of sites of houses. Mr Dunoan in his report of the 13th June, 1788, observed that there was, properly speaking, no quit rent in the country for ground occupied by houses except in the city of Benares. Loosely *purjoti* was also called *khana shumaree*, a term applied to the tax called *Ghurwaree*. Mr. E A Reid, member, Board of Revenue, North-Western Provinces, wrote in a minute, dated the 18th of November, 1853, giving reasons why the zamindars throughout the Province had no right to levy ground rent for the sites of houses which had been in existence at the time of the permanent settlement. Mr. Oldham<sup>1</sup> observes that the conclusions of Mr. Reid are probably correct.

For *purjoti* or ground rent for houses other than those in permanently settled districts is as a rule levied from resident cultivators, but the village custom or the *wajib-ul-arz* may provide otherwise. Non-cultivators who reside in agricultural villages have to pay some sort of rent according to the terms of the *wajib-ul-arz*.<sup>2</sup> All *abadī* and waste lands in villages are the property of the zamindars thereof. Baden-Powell says in his "System of Land Tenures" (Vol. I, p. 107): "The site, on which the village habitations, the tanks, the graveyard and the cattle-stand are, is claimed by them (the zamindars); and the others live in it and use it only by permission—perhaps on payment of small dues to the proprietary body"; and again at p. 154—"The village site is owned by the proprietary body which allows residences to—

- (1) the *Kamin*, the artisan class, farm labourers and menials;
- (2) the tenancy;
- (3) the traders, money-lender etc. These probably pay some small dues, according to custom; and, if they leave the village, may have no right to dispose of the site; and, only in some cases, to remove the roof timber and other materials."

The entry of land as *purjoti* is evidence of some value, though not signed by ryots.<sup>3</sup>

A statement made more than 50 years ago by a zamindar that certain classes of traders, resident in the village, deliver some articles annually as *purjoti*, is not a tradition but a statement made by a person possessing an interest and an existing right in the village and is evidence of an agreement to pay *purjoti*.<sup>4</sup>

Where a custom exists a zamindar may realise ground rent for sites of houses and Chowkidara from the inhabitants of a village.<sup>5</sup>

<sup>1</sup> Section 196 of the Historical and Statistical Memoir, Ghazipur District.

<sup>2</sup> *Abdul Has v. Nathwa*, 24 A. W. N. 204—1 A. L. J. 537.

<sup>3</sup> *Sri Lal v. Kesho Das*, VI U. D. (H. C.) 433—1925 R. C. 268—6 L. R. Rev. 93—9 R. D. 284.

<sup>4</sup> *Muh. Faiyaz Ali Khan v. Behari*, 40 All. 56—15 A. L. J. 873.

<sup>5</sup> *Laiqa v. Shiam Sunder Lal*, 8 Rev. and Cr. L. J. 134—V U. D. (H. C.) 39—3 L. R. Rev. 154—7 R. D. 182.

As to cesses, see the commentary on the Land Revenue Act, section 56.

An agriculturist tenant has no right to build a shed upon a plot of land in the *abadi* without the consent of the landholder, although he has been throwing rubbish over it for a long time.<sup>1</sup>

The next question is as to the right of tenants to reside and build houses in *abadis*, and the extent of such right. In villages which are usually cultivated by resident tenants the latter may be said to have a fairly well established right of residence,<sup>2</sup> unless they contract themselves out of it, and *wajib-ul-arzes* of such villages as a rule provide for the right of free residence, but make the erection of houses dependent on the zamindar's consent. Where such consent is not obtained the house may be ordered to be demolished, but the tenant cannot be ejected from the land. Such consent must be obtained and be proved to have been obtained, but where a house has been allowed to be built and to remain standing for a length of time, the consent might be inferred or presumed.<sup>3</sup> It has been held that where it appears from the evidence that a tenant has for a number of years used a particular piece of land, belonging to the zamindar, with other tenants, as a threshing floor, the court may, in the absence of proof to the contrary, infer that the right to use the plot of land for that purpose was part of the contract of tenancy:<sup>4</sup> so in the case of a house in the *abadi* <sup>5</sup>

In *Gopi Shanker v. Lilawati*,<sup>6</sup> it was laid down by two judges that there is no presumption of law that the house occupied by a cultivator in a village is appurtenant to his holding, and that either the house or the site must be given up, simply because the tenancy has either been lost or has lapsed by death, in favour of the zamindar. One of the judges further opined that it is for the zamindar to establish by evidence that a cultivator's right to the site is dependent on his right to retain the holding. As to a tenant's right to acquire an easement over the landholder's property, see sections 11 and 12, Easements Act, *Udit Singh v. Kashi Ram*.<sup>7</sup>

It is sometimes said that such consent creates a license revocable at the will of the grantor. It does nothing of the kind. A tenant has a right of residence in the village. It is part of his contract. The consent merely refers to the selection of a site of the residence, and, when given, becomes part of the contract of tenancy. So long as the tenant continues to be a cultivator in the village, he cannot be ousted from site or be

<sup>1</sup> *Jagannath v. Gurdayal Singh*, 10 I. C. 284.

<sup>2</sup> See *Nasir Hasan v. Shibba*, 27 All. 81=1 A. L. J. 497=24 A. W. N. 168.

<sup>3</sup> *Kehart Singh v. Hulasi*, 12 A. L. J. 715=21 I. C. 967 (A).

<sup>4</sup> *Dalel v. Bhajju*, 16 All. 181; *Khazan Singh v. Mukhram*, II U. D. 701.

<sup>5</sup> *Ram Harakh v. Ambika Dutt*, 5 O. L. J. 642=48 I. C. 420.

<sup>6</sup> 54 All. 379=1932 A. L. J. 142=1932 A. I. R. All. 252=13 L. R. Rev. 105=XIII U. D. (H. C.) 58.

<sup>7</sup> 14 All. 185 (F. B.).

asked to remove the materials of his house.<sup>1</sup> He may, however, have to pay rent for the site in accordance with village custom or the *wajib-ul-arz*. In one case, the court seems to have laid down as a general rule that tenants must pay rent for the site or quit it.<sup>2</sup> But the facts of that case were peculiar. There, the plaintiff was a zamindar and the defendants agricultural tenants of the village. Some weavers had occupied a house in the village site. They left the village, leaving the site of the house vacant, and the allegation in the plaint was that the defendants seized upon that site and built a house upon it. Thus the whole suit was based upon an alleged trespass. The defendants said that the houses had been built more than 20 years before the suit with the consent of the plaintiff. The Lower Appellate Court did not come to any finding on the question of trespass. The High Court remitted, for determination, issues as to trespass, the age of the house, the zamindar's consent, and the cost of building. The findings were that there was trespass, that the house was more than 25 years old, that it cost Rs. 300, and had been erected with the plaintiff's consent. The High Court (Burkitt and Chamier, JJ.) thereupon observed : " The defendants-appellants are not tenants of the patch of land on which these houses stand. We do not even think that they can be called licensees. All that is shown is that these houses were erected with the implied consent of the zamindar ; that does not imply a grant of a right to do, or continue to do, any act in or upon immovable property within the meaning of section 52, Easements Act. It does not amount to a grant, and shows no more than a tacit acquiescence by the zamindar in acts done by the defendants or their predecessors. No question of adverse possession can arise. The position, therefore, of the defendants here is no higher than that of persons who having no title and knowing they had no title built upon land which they knew belonged to the zamindar without any interference by the latter. They acquired no title in the land which forms the site on which they built these houses ; they have given no consideration for their occupation of that site and have foolishly, in our opinion, refused to agree to pay rent for it when given an opportunity to do so. They are, in our opinion, liable to be ejected at any moment by the zamindar."

The judgment does not show whether the defendants had, prior to the occupation of the house in dispute, other houses in the village site, which they abandoned or retained afterwards, but the plaint seemed to indicate that they had. If so, the decision is perfectly intelligible, for a tenant has no right to change the site of his residence as and when he likes without an agreement with zamindar. But if they began to occupy the site with the commencement of their status as tenants, the decision does not commend itself. For the village being *chupperband* or *khudkash*, they had a right of residence in the village, and the findings amounted to this that the zamindar consented to their

<sup>1</sup> *Nazir Hasan v. Shibba*, 27 All. 81=24 A. W. N., 168=1 A. L. J. 479 ; *Dubri Lai v. Bholu Rai*, 3 A. L. J. 619=26 A. W. N. 243 ; *Saddu v. Behari Singh*, 30 All. 283=5 A. L. J. 237.

<sup>2</sup> *Punna v. Nazir Husain*, 22 A. W. N. 60.



selection of the site. Hence they were not licensees, but held under a contract, and could not be ejected at the mere pleasure of the zamindar.

This case was doubted in the three-judge case, *Saddu v. Behari Singh*,<sup>1</sup> which held that a cultivator is not liable to pay rent for the occupation of the site of a house in the *abadi*.

Where a printer built a house in an agricultural village and thereafter began to cultivate land, the ordinary presumption that the site is appurtenant to the holding does not apply.<sup>2</sup>

As a cultivator, a tenant is only entitled to occupy so much site in the *abadi* as has been allotted to him for need. If he has built a house on a village site that would be considered as appurtenant to his holding,<sup>3</sup> or if the zamindar contests that position and the house has been in extent for more than 12 years and no license is proved, as having acquired title by adverse possession.<sup>4</sup> If he has built another house on an adjoining site, and that house is not appurtenant to his holding, the fact that it has been in existence for more than 12 years will not give him a title by adverse possession.<sup>5</sup> It is really difficult to differentiate the two cases decided by the same Bench, so far as the question of limitation is concerned.<sup>6</sup> But a cultivator may occupy two houses appurtenant to his holding, and, if that is so, he cannot be ejected from either.<sup>7</sup> There is no legal presumption that every dwelling-house belonging to an agriculturist is appurtenant to his holding.<sup>8</sup>

Where a site was granted to a patwari and his son who was the zamindar's karinda for building a residential house, and such house was built, but the two ceased to hold their respective offices and set up ownership of the site in themselves by a custom which was not proved, they were held to be tenants-at-will and liable to ejectment on account of the denial of title. It appeared they had during the pendency of the suit acquired a fractional share in the zamindari. This fact was held not to affect the case.

Where a co-sharer built upon a house-site vacated by a tenant, it was held that he did not thereby oust any other co-sharer who could not therefore sue to eject him.<sup>9</sup>

<sup>1</sup> 30 All. 282—5 A. L. J. 237—28 A. W. N. 123.

<sup>2</sup> *Nabi Muhammad v. Bhagwat Prasad*, 1932 A. I. R. All. 33—1931 A. L. J. 649—XII U. D. (H C) 177.

<sup>3</sup> *Ramdial v. Narpal*, 33 All. 136—8 A. L. J. 190—9 I. C. 931; *Ram Harakh v. Ambika Datt*, 5 O. L. J. 642—48 I. C. 420.

<sup>4</sup> *Nazir Hasan v. Shibba*, 27 All. 81—1 A. L. J. 479. See also *Inchiram v. Bande Ali*, 33 All. 757—8 A. L. J. 377—11 I. C. 52; *Abdul Hai v. Alla Baksh*, 11 U. D. 721.

<sup>5</sup> *Jaikishen v. Moti Chand*, 3 A. L. J. 627—26 A. W. N. 258.

<sup>6</sup> *Dubri Lal v. Dholu Rai*, 3 A. L. J. 619—26 A. W. N. 243.

<sup>7</sup> *Motiram v. Munnatal*, 11 U. D. 726.

<sup>8</sup> *Budh Singh v. Parbati*, 29 All. 652—4 A. L. J. 556—27 A. W. N. 281.

<sup>9</sup> *Sarsati Prasad v. Kalka*, 11 U. D. 702.

The right of residence which a tenant has is for himself, his family, cattle, and storage of produce. Having obtained his land-holder's permission to build on a site for this purpose, he cannot extend his building to sites not allotted to him or encroach upon other portions of the *abadi* or waste lands of the village by erecting other buildings. That will be an act of encroachment for which he may be ejected from the extra land. Nor can a residential house be converted into one for non-residential purpose, *e. g.*, into a temple or a mosque,<sup>1</sup> but he may make any improvement he likes so long as he does not interfere with the rights of the zamindar,<sup>2</sup> *e. g.*, sink a *pucca* well in the *sehan* of his house<sup>3</sup>

A tenant is not entitled to build a house on the site of a chappar.<sup>4</sup>

A raiyat in a village abadi is not entitled, as a matter of right and without the consent of the zamindar, to construct a building on land which he was using as an outer *sehan* appurtenant to his house.<sup>5</sup> He cannot build a dwelling house on the *sehan* (*parti laad*) in front of his existing house.<sup>6</sup>

Where a proprietor permits a tenant to occupy a land for his residence, the tenants may build on it, enlarge the user and improve the residence,<sup>7</sup> and convert a *kutchra* into a *pucca* house.<sup>8</sup>

But unless the right of user carries with it the right to make permanent structures the latter are not permissible.<sup>9</sup>

The right is one of residence or use for agricultural purposes so long as the building is maintained, *e. g.*, does not fall down and the tenant does not abandon it by leaving the village.<sup>10</sup> The tenant, so long as he is an agriculturist in the village may repair the building, and improve it so as not to injure the landholder's rights. Should it fall down he can rebuild it within a reasonable time but if he abandons the site it reverts to the landholder. Where an attempt to rebuild a house after the lapse of some considerable period from

<sup>1</sup> *Gobardhan v. Abdul Ghafur*, 7 A. W. N. 106. See also *Basamal v. Ghayas-ud-din*, 27 All 356—24 A. W. N. 276.

<sup>2</sup> *Balkishen v. Muhammad Ismail*, 18 A. W. N. 44.

<sup>3</sup> *Mahadeo Rai v. Jan Muhammad*, 47 All. 541—1925 A. I. R. All. 341—23 A. L. J. 231—1925 R. C. 257—VI U. D. (H. C.) 560—6 L. C. Rev. 211—11 R. and Cr. L. J. 285—85 I. C. 1—9 R. D. 92

<sup>4</sup> *Rati Singh v. Dimodar Lal*, 1930 A. L. J. 1608—129 I. C. 718—15 R. D. 77.

<sup>5</sup> *Ratan Barhai v. Kishen Dasi*, 55 All. 294—1933 A. L. J. 56—1933 A. I. R. All. 288—XIV U. D. (H. C.) 35—17 R. D. 141.

<sup>6</sup> *Badri v. Dwarika Prasad*, 1940 A. L. J. 229—1940 R. D. 131.

<sup>7</sup> *Rameshwar Singh v. Dwarika*, 1 U. P. L. R. (J. C.) 60 ; *Abdul Majid v. Shiva Govind*, 1 Leg. Rem. (H. C.) 9.

<sup>8</sup> *Ghorey v. Shib Lal*, 18 A. L. J. 781—IV U. D. 783—58 I. C. 410—2 U. P. L. R. 266—6 R. D. 370.

<sup>9</sup> *Saina v. Behari Lal*, 1922 A. I. R. All. 273—V U. D. (H. C.) 123—1922 R. C. 426—69 I. C. 795—7 R. D. 18.

<sup>10</sup> *Sri Girdhari Maharaj v. Chote Lal*, 20 All. 248—18 A. W. N. 27.

the time it fell down is made, and the landholder objects, the issue as to abandonment is one of fact, and in deciding it the court will probably be guided by the conduct, in the meantime, of the parties with regard to the site, *e. g.*, whether the tenant or the landholder exercised acts of possession over it, whether the tenant behaved as if it was still in his possession, or the landholder dealt with it as if it had lapsed to him.<sup>1</sup> A tenant's right to hold a house appertaining to his holding ends with his ejection therefrom,<sup>2</sup> so as regards the site on which such house stands.<sup>3</sup> When a tenant abandons the house by leaving the village, the site and the house become the property of the landholder.<sup>4</sup> Where the tenant died in prison and his dwelling house remained vacant for years and was practically abandoned it lapsed to the zamindar and cannot be sold in execution of a decree on a mortgage executed by the tenant.<sup>5</sup> Where a shed fell down and the site was allowed to remain unoccupied for five years it was held to have lapsed to the zamindar.<sup>6</sup> A tenant may remove the materials of his house when giving it up. He may, when wrongly dispossessed, recover possession of the site, though the house has been demolished.<sup>7</sup>

A *riyaya* in a village *abadi* is entitled to retain possession of his house appurtenant to his tenancy until he is ejected from his holding or he abandons the village. If the house is not appurtenant to the tenant's holding then the person who has built it has only a right of residence until the house falls down or the tenant abandons it.<sup>8</sup>

A tenant died leaving a house and no heirs. The house lapsed to the zamindar. A purchased the house from a person who had no title to it and improved it at considerable expense. In a suit to eject A, it was held that he could not even remove the materials of the house.<sup>9</sup> The house or the site does not escheat to the Crown.<sup>10</sup>

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<sup>1</sup> See *Aman Ali v. Azim-un-nissa*, II U. D. 703.

<sup>2</sup> *Phul Bibi v. Zahar Ali*, 28 I. C. 849 (A). But see *Gopi Shanker v. Lilawat*, 54 All. 379 cited at p. 1026 *supra*

<sup>3</sup> *Shohrat Singh v. Jhagru*, 13 A. L. J. 745=30 I. C. 782=1 R. and Cr. L. J. 101; *Ram Harakh v. Ambika Dutt*, 5 O. L. J. 642=48 I. C. 420; *Ghirrao v. Karan Singh*, 5 O. L. J. 453=47 I. C. 645.

<sup>4</sup> *Chhajju v. Kanhai*, 1 A. W. N. 114=2 Leg. Rem. 121 (H. C.)

<sup>5</sup> *Rup Singh v. Mitlu Singh*, 21 A. L. J. 280=1923 A. I. R. All. 357=9 Rev. and Cr. L. J. 156=1923 R. C. 125=V U. D. (H. C.) 143=4 L. R. Rev. 133=7 R. D. 31.

<sup>6</sup> *Renuka v. Mulayam*, II U. D. 753.

<sup>7</sup> *Tara Singh v. Umed*, 2 A. W. N. 35.

<sup>8</sup> *Khagga v. Humma*, 1941 R. D. 492 (C. C.)

<sup>9</sup> *Fakir Chand v. Kewalram*, 10 A. L. J. 118=16 I. C. 633.

<sup>10</sup> *Bharatpur State v. Secretary of State*, 16 A. L. J. 653=4 Rev. and Cr. L. J. 216=47 I. C. 825; *Nathu Ram v. Lakshmi Narain*, 22 I. C. 891 (A).

When the house falls and the site is cultivated, the landholder is entitled to resume.<sup>1</sup> Ejectment may also be ordered from plots in an *abadi* which are paths or *parti*.<sup>2</sup>

A custom of transfer is not bad, and is proved by a number of unexplained sales.<sup>3</sup>

In the absence of a custom, a tenant has no right to transfer the right of occupation of the house,<sup>4</sup> even to a co-sharer in the village,<sup>5</sup> nor can such right be sold in execution of a decree against him<sup>6</sup> or mortgaged.<sup>7</sup> The materials may be sold or mortgaged in the absence of a custom to the contrary<sup>8</sup> and the purchaser is entitled to take them away.<sup>9</sup> The law was very clearly laid down in *Sri Girdharji Maharaj v. Chote Lal*,<sup>10</sup> by Sir John Elge, C. J., and Burkitt, J. who said :—"According to the general and well-known custom of these Provinces, a custom so well established that it may be taken as the common law of these Provinces, a person agriculturist or agricultural tenant who is allowed by a zamindar to build a house for his occupation in the *abadi* obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the *abadi*, occupying under the zamindar, as in this case, he has, unless he has obtained by special grant from the zamindar an interest which he can sell, no interest which he can sell by private sale or which

<sup>1</sup> *Munnu Lal v. Ilahi Buz*, II U. D. 16.

<sup>2</sup> *Ram Sewak v. Beni Mudho*, II U. D. 26=4 R. D. 498.

<sup>3</sup> *Faiyaz Ali v. Bekhab Das*, 1921 A. I. R. All. 46=19 A. L. J. 164=IV U. D. 704=61 I. C. 24=6 R. D. 301; *Rafiq v. Shankar Lal*, 6 L. R. Rev. 109=VI U. D. (H. C.) 425=1925 R. C. 254=9 R. D. 286; *Har Prasad v. Hori Lal*, 116 I. C. 799.

<sup>4</sup> *Hanmant v. Kamta*, 11 I. C. 285; *Muhammad Usman v. Babu*, 8 A. L. J. 61; *Champa v. Tulsi*, 1924 A. I. R. All. 921=79 I. C. 954=5 L. R. Rev. 140=1924 R. C. 228=10 R. and Cr. L. J. 173=8 R. D. 434; *Aisha v. Daulat Ram*, 1927 A. I. R. All. 471=8 L. R. Rev. 110=VIII U. D. (H. C.) 107=1927 R. C. 93=100 I. C. 605=11 R. D. 601, but see *Mahadeo Prasad v. Harbans*, 1926 A. I. R. All. 126=11 Rev. and Cr. L. J. 259=VI U. D. (H. C.) 513=1925 R. C. 322=6 L. R. Rev. 182=89 I. C. 179=9 R. D. 123.

<sup>5</sup> *Bhartu v. Deodar Singh*, 1929 A. I. R. All. 241=113 I. C. 831=10 L. R. Rev. 196=X U. D. (H. C.) 164=13 R. D. 322.

<sup>6</sup> *Bhajan v. Muhammad Abdus Samad*, 25 A. W. N. 90; *Sri Girdharji Maharaj v. Chote Lal*, 20 All. 248=18 A. W. N. 27; *Ramdial v. Narpal*, 33 All. 136=8 A. L. J. 190=9 I. C. 931.

<sup>7</sup> *Amir Begam v. Balak*, 20 A. W. N. 182; *Muhammad Rafi v. Telhu*, 22 A. W. N. 140; *Champa Kuar v. Tulsi Ram*, 1924 A. I. R. All. 921=5 L. R. Rev. 140=10 Rev. and Cr. L. J. 173.

<sup>8</sup> *Ganga Prasad v. Kanji*, 1 A. W. N. 82, 104.

<sup>9</sup> *Ib.*, *Nathuram v. Lakshmi Narain*, 22 I. C. 891 (A).

<sup>10</sup> 20 All. 248.

can be sold in execution of a decree against him, except his interest in the timber, roofing and wood-work of the house. There is good reason why such a custom should have grown up and have been established. If it were otherwise, agricultural tenants or cultivators who for the purposes of the cultivation of the agricultural lands of the village, were permitted by the zamindar to build or occupy a house in the *abadi* of a particular village, might sell the right to occupy the house to some person unconnected with the cultivation of the agricultural lands in the village. In such a case the zamindar would practically lose his rights in the *abadi* and would be compelled to restrict the area of cultivable land in the village so as to provide sites for fresh houses for agriculturists. It might happen that a purely agricultural village, every single site in the *abadi* of which belonged to the zamindar solely, might come to be a village, for example, of weavers, who neither paid rent to the zamindar, nor promoted the cultivation of agricultural lands in the village." The ruling dissented from the view in *Narain Prasad v. Dammur*,<sup>1</sup> that, apart from special contract, the occupier of a house in the *abadi* under the zamindar has an interest in the occupancy of the house which can be sold, and explained that the expression "other lawful assignees," used in *Chajju Singh v. Kanhai*,<sup>2</sup> did not mean purchasers from such occupier. When custom or contract permits a transfer, a purchaser acquires the right to live in the house, repair and improve it.<sup>3</sup> Even in the absence of such a custom, if the landholder or his agent allows a costly building to be put by the purchaser, with full knowledge of his rights, he cannot succeed in a suit to demolish it.<sup>4</sup>

Recently the High Court has considered the matter and held that "a usufructuary mortgage also is a transfer of the kind which the law does not permit occupiers of house standing on the zamindar's land to make." They can themselves live in the house but cannot force a stranger on the zamindar.<sup>5</sup>

Clear and cogent evidence is needed to prove a custom, such as that of transfer of the right of residence in a village *abadi*.<sup>6</sup> The fact that a number of transfers have taken place, apparently without any objection on the part of the zamindar, is not sufficient evidence of the existence of such custom.<sup>7</sup> Evidence of transfers and decrees in which transfers were recognised were held to establish such a custom.<sup>8</sup>

<sup>1</sup> 8 A. W. N. 125.

<sup>2</sup> 1 A. W. N. 114=2 Leg. Rem. 121 (H. C.).

<sup>3</sup> *Narain Prasad v. Dammur*, 8 A. W. N. 125.

<sup>4</sup> Aikman, J., in *Raj Narain v. Budh Sen*, 27 All. 338=24 A. W. N. 240=1 A. L. J. 673.

<sup>5</sup> *Fateh v. Har Bilas*, 1939 All. 265=1939 A. I. R. All. 392=1939 A. L. J. 104=1939 R. D. 138.

<sup>6</sup> *Ganga Kalwar v. Beni Madho Prasad Singh*, 54 All. 82=1932 A. L. J. 111=1932 A. I. R. All. 52=133 I. C. 187.

<sup>7</sup> *Muhammad Usman v. Babu* 8 A. L. J. 61; *Ram Bilas v. Lal Bahadur*, 30 All. 311; *Muhammad Wilayat Ali v. Muhammad Liakat Ali*, 11 U. D. 704, see *Ganga Kalwar v. Beni Madho Prasad Singh*, 54 All. 82=1932 A. L. J. 111.

<sup>8</sup> *Girraj Singh v. Hargobind Sahai*, 32 All. 125=7 A. L. J. 36; *Tojammul Husain v. Banwari Lal*, 48 All. 77=1926 A. I. R. All. 43=23 A. L. J. 932=6 L. R. Rev. 179=VI U. D. (H. C.) 507=1925 R. C. 399=88 I. C. 752=9 R. D. 144. See also *Alif Khan v. Wajid Ali*, 14 L. R. Rev. 399=XIV U. D. (H. C.) 84.

A person who purchases the interest of a tenant who can only sell the materials of the house and then acquires the proprietary interest of some of the co-sharers of the village does not get a right of residence in the house.<sup>1</sup>

If a co-sharer purchases the house of a tenant and retains its possession other co-sharer can sue for joint possession of the site by removal of the materials.<sup>2</sup>

A custom allowing transfers of houses and sites is confined to the classes contemplated by it.<sup>3</sup>

An old *wajib-ul-arz* entry against transfers may be disproved by frequent instances of transfers, thus showing that the custom has fallen into disuse.<sup>4</sup>

<sup>1</sup> A zamindar having the right to eject a *raiya* from a building can do so, only for good cause and not arbitrarily.<sup>5</sup>

Where the *wajib-ul-arz* of a village provided that a *raiya* who sold a house should pay one-fourth of the sale-consideration to the zamindar, and the latter, if he desires to do so, might take one-fourth of the materials, it was held that this related only to sales of the materials of houses and not to the sites thereof, and that, therefore, the zamindar could sue to recover possession of the site of a house sold.<sup>6</sup>

The right of residence passes with the holding to the heirs. If a tenant dies heirless, the right does not escheat to the Crown but lapses to the zamindar.<sup>7</sup>

Non-cultivators have no right of residence in an agricultural village, but custom or contract may allow them to have such right. Their relation with the zamindar is then regulated by the terms of such custom or contract. As a rule, they have to pay for the occupation of the site. The consideration for the occupation, by whatever name it may be called, *e. g.*, *gharduwaree*, *khana shumaree*, *mootahurefa*, *purjote*, rent, etc. is of the nature of rent, as the term is understood in ordinary legal phraseology, and not a cess.<sup>8</sup> Where a person has been let in by the consent, express or implied, of the zamindar, the ordinary relation of landlord and tenant arises, which is now regulated, as to its incidents, by the Transfer of Property Act, on points on which

<sup>1</sup> *Bhiku Mal v. Makbul Singh*, 38 I. C. 871 (A).

<sup>2</sup> *Darshan Singh v. Prag Singh*, 1939 R. D. 612.

<sup>3</sup> *Qadir Baksh v. Abdul Haq*, 1924 A. I. R. All. 509—5 L. R. Rev. 187—VI U. D. (H. C.) 127—1926 R. C. 129—84 I. C. 258—9 R. D. 194.

<sup>4</sup> *Kushal Pal Singh v. Gulzari Lal*, 1933 A. L. J. 439—14 L. R. Rev. 265.

<sup>5</sup> *Dina Singh v. Devi Chand*, 71 I. C. 529 (A).

<sup>6</sup> *Muhammad Usman v. Babu*, 8 A. L. J. 61—9 I. C. 314.

<sup>7</sup> *Nathu Ram v. Lakshmi Narain*, 22 I. C. 891 (A) See Footnote 10 at p. 1030.

<sup>8</sup> *Abdul Hai v. Nathua*, 24 A. W. N. 204—1 A. L. J. 537. See *Secretary of State v. Karuna Kanta Chowdhry*, 35 Cal. 82 (F. B.)—11 I. C. 217.

the custom or contract is silent. When no consideration has been given for the permission to build, they must agree to pay the rent demanded by the landholder or quit the land.<sup>1</sup> The *wajib-ul-arz* or village custom is primarily the test of the right to transfer, etc.

Usually, a person who claims the right of residence in a house within the zamindari of another must be an agriculturist tenant of that other. Hence a tenant in one village or mahal cannot claim the right of residence in another village or mahal and if he has a house there, he occupies the site by license.<sup>2</sup> But if A, as cultivator in an entire village, occupied a site for residence or tethering cattle, and the village has been partitioned between the co-sharers, so that A's cultivatory holding falls in the area assigned to one co-sharer and the site in the area assigned to another co-sharer, the partition, to which he was not a party will not affect his rights. He will be entitled to occupy the site without payment of any rent as before.<sup>3</sup> But he has to pay chowkidar's dues if sanctioned by custom.<sup>4</sup>

Structures which have been long in the possession or use of village blacksmiths in carrying on their trade as reasonable appurtenances to it will be presumed to have been acquiesced in by the zamindars as such appurtenances, and may be replaced when they fall down.<sup>5</sup>

Abandonment of the site of a house reverts the site to the zamindar, though the tenant has not given up all connection with the village.<sup>6</sup> It is not absolutely necessary to show that the occupier of the house has left the village.<sup>7</sup> The mere fact that a house has fallen into disrepair and is not rebuilt does not necessarily prove abandonment, and the tenant is not bound to give up the site in these circumstances is in an urban area.<sup>8</sup>

Where a house is found not to appertain to the agricultural holding, e. g., one built by tenant who also carried on the business of dyeing and printing, the ordinary presumption is that the builder has a right of residence to occupy it so long as the house stands or he does not abandon

<sup>1</sup> *Panna v. Nazir*, 22 A. W. N. 60.

<sup>2</sup> *Sundar Lal v. Chajju*, 21 A. W. N. 24

<sup>3</sup> *Saddu v. Behari Singh*, 30 All. 282=5 A. L. J. 237=20 A. W. N. 123 (site of house); *Dharam Singh v. Bhoolar*, 2 A. L. J. 588 (site for tethering cattle); *Netram v. Tejram*, 11 A. L. J. 405; *Mukhram v. Kota*, 12 A. L. J. 488=24 I. C. 82.

<sup>4</sup> *Laiga v. Shiam Sunder Lal*, V. U. D. (H. C.) 39=3 L. R. Rev. 154=8 R. and Cr. L. J. 134=7 R. D. 182.

<sup>5</sup> *Ish Narain v. Rameshwar*, 22 A. L. J. 244=1924 A. I. R. All. 433=5 L. Rev. 91=VI U. D. (H. C.) 62=1924 R. C. 38=78 I. C. 164=9 R. D. 362.

<sup>6</sup> *Chhotey Lal v. Manzur Ahmad*, 1929 A. I. R. All. 439=116 I. C. 813=10 L. R. Rev. 282=X U. D. (H. C.) 223=13 R. D. 525.

<sup>7</sup> *Fateh v. Har Bilas*, 1939 All. 265=1939 A. I. R. All. 392=1939 A. L. J. 104=1939 R. D. 138

<sup>8</sup> *Muri Lal v. Durga Narain*, 1940 U. D. 213 (H. C.).

it. His ejectment from the holding will not entitle the landholder to claim the house.<sup>1</sup>

If a licensee builds a house in pursuance of his license keeping portion of the plot, to which the license relates vacant using it as *sehandarwaza*, he has a possessory interest in the plot entitling him to maintain a suit whether against the licensor or against a third person. As against the licensor, the license is unrevocable under section 60(b) of the Easements Act.<sup>2</sup>

The law with regard to the tenant's right to erect buildings in the *abadi* is not altered by the provisions of the United Provinces Tenancy Act, 1939.<sup>3</sup>

**Building on holdings**—The Rent Acts did not include buildings in the list of improvements, and the items mentioned in section 44 thereof were probably meant to be exhaustive. Tenants in these Provinces, therefore, could not claim compensation for any building, erected on their holding, on ejectment or dispossession. But they were not absolutely debarred of the right to build. They could do so here it was necessary for the full enjoyment of the lease or tenancy. This right was of an extremely narrow character. The Act of 1926 included in the list of improvements the erection of buildings on a holding or in its immediate vicinity, elsewhere than on the village site, provided it was required for the convenient or profitable use or occupation of the holding and consistent with the purpose for which it was let, or which added materially to the letting value of the holding. Under the present Act a tenant can build a house on the holding intended for his occupation irrespective of the fulfilment of the above conditions. A cattle shed or a store-house or any other construction for agricultural purposes can be erected irrespective of the conditions except that it shall not be inconsistent with the purpose for which the holding was let. Where a building is not on the holding itself, it must have been erected directly for its benefit or is, after erection, made directly beneficial to it. Tenants can claim compensation for buildings which are improvements—which they could not do under the Rent Acts.

A tenant has no right to build anything on his holding except to improve it<sup>4</sup> or for the full enjoyment of the lease. The landholder has the right to insist that an agricultural holding should not be turned into one of another character and to treat an erection which brings about this result as an act inconsistent with the purposes for which it was let. Where a landholder alleges that a building put up by a tenant on his holding is an act inconsistent with such purposes and the tenant denies it, the issue for the Court to determine is whether the assertion of the

<sup>1</sup> *Nabi Muhammad v. Bhagwat Prasad*, 1931 A. L. J. 649—1932 A. I. R. All. 33—XII U. D. (H. C.) 177—12 L. R. Rev. 303—15 R. D. 560.

<sup>2</sup> *Ashar Husain v. Mansab* 1940 A. L. J. 354—1940 R. D. 187.

<sup>3</sup> *Badri v. Dwarka Prasad*, 1940 A. L. J. 229—1940 R. D. 131.

<sup>4</sup> See *Dharamraj v. Sumeran*, 21 All. 388—19 A. W. N. 123, which was a case of digging a well; *Rameshar Singh v. Bhim Singh*, III U. D. 246.



landholder is correct, or whether the act was for the full enjoyment of the tenancy and did not change the holding into one of another character. This must be considered with reference to the particular holding in question, for what may be suitable in one case may not be so in another. For instance, where a tenant holding 53 bighas of land put up, on a small portion, a shed for the accommodation of his cattle used for agricultural purposes and for the herd employed to take care of them and a wall enclosing such shed, the act was held not to be detrimental to the holding or inconsistent with the purposes for the which it was let.<sup>1</sup> On the other hand, if only an acre of land was let for cultivation and the tenant built upon it, it would be such an act.<sup>2</sup> Should a tenant be inclined to build so as to change the character of the building, he should obtain the consent of his landholder. Where tenant's holding consisted of 13 fields with an area of over 26 bighas, and he built a house on one of the fields on an area of 3 or 4 biswas, it was held that he could not be ejected from the whole holding but only from the field on which the house is built.<sup>3</sup>

A tenant is entitled to sink a well in a portion of his house or on land appurtenant to his house.<sup>4</sup>

A well found to be on or appurtenant to an occupancy holding is intrans-ferable as the holding itself and a sale thereof in execution of a decree, in spite of objections, passes no title to the purchaser.<sup>5</sup>

The purchaser will not be allowed to destroy the well by removing its materials.<sup>6</sup>

Where an erection is detrimental to the holding or inconsistent with the purposes of its letting, the landholder may sue to eject him under the provisions of section 72 unless it comes within the category of improvement or to claim compensation or to obtain an injunction for the removal of the building. Under the Act of 1926 he could sue for these latter reliefs in addition to the relief for ejectment, but under the present Act he can either sue for ejectment or for these reliefs. The Court, however, has discretion to prevent actual ejectment where the act was not wilful but under a *bona fide* mistake, or where no damage has been done, or where money compensation or other relief would afford an adequate remedy. It may give an option to the tenant to repair the damage by removing the building or pay compensation, or to be actually ejected. Or, where the conduct of the landholder amounts to waiver or acquiescence or where he has been guilty of *laches*, it may refuse to enforce

<sup>1</sup> *Hemraj v. Dammer*, 8 A. W. N. 120.

<sup>2</sup> See per Mahmood, J., in *Debi Prasad v. Hardayal*, 7 All 691=5 A. W. N. 205.

<sup>3</sup> *Kallu v. Sunder Lal*, 24 I. C. 783.

<sup>4</sup> *Sheo Sahai v. Rajeshwar Bali*, 6 O. L. J. 287=51 I. C. 1006; *Mahabal v. Sarju*, 4 O. L. J. 54=42 I. C. 51; *Mahadeo Rai v. Jan Mukh*, 47 All. 541=23 A. L. J. 23=11 R. and Cr. L. J. 286=VI U. D. (H. C.) 560; *Farhat Ullah v. Muhammad*, 10 L. R. Rev. 151=X U. D. (H. C.) 105=13 R. D. 440.

<sup>5</sup> *Sukhdeo v. Donger*, 15 L. R. Rev. 144=XV U. D. (H. C.) 34.

<sup>6</sup> *Sukhdeo v. Donger*, 15 L. R. Rev. 144=XV U. D. (H. C.) 34.

ejection. Thus if a landholder stands by, without protest, while his tenant spends money in putting up a substantial building, and then sleeps over his right of action for a number of years, the Court will not grant the discretionary relief of mandatory injunction for removal of the buildings,<sup>1</sup> nor will it enforce actual ejection of the tenant<sup>2</sup> as on a forfeiture of the lease. If the cost has been slight, and the building can be conveniently removed, an order for demolition may be passed.<sup>3</sup> In other cases, damages may be awarded.

Attention ought here to be drawn to a matter about which a mistake might be made. Although a landholder, by allowing a tenant to build on his holding without any protest or objection, loses his right to say that the lease has been forfeited by such act, the tenant cannot, when his lease has expired, resist ejection on this ground alone. For he must have known that he had no right, as a temporary tenant, to erect a costly building on his holding. He must further prove that the landholder by his act, conduct or omission, induced him to believe that the tenancy was of a permanent character,<sup>4</sup> or, that, knowing that the tenant laboured under the belief that his tenure was permanent, he purposely remained quiet.<sup>5</sup>

In any case, a tenant, if he is not entitled to compensation for a building, is entitled to remove the materials during the continuance of his tenancy or to make any contract with his landholder regarding them.

An occupancy tenant can sell the tanks, wells and buildings on his holdings.<sup>6</sup>

**3. Towns etc.**—As regards houses within towns and Municipal limits there seems to be no uniform rule of law. In some places they are still considered as parts of zamindari; in others they are freehold. In *B'addar v. Khairuddin*<sup>7</sup> A had owned a house within the zamindari of B, and within Municipal limits, for more than 35 years. The *wajih-ul-arz* provided for payment of ten per cent. of the price to the zamindar on sales of houses of *riyayus*. A was not a cultivator or a member of the artisan class to whom sites were granted rent-free. It was held that it must be presumed that A had acquired an absolute title either by grant or by prescription; and that even if he, as licensee, built the house, the license could not be revoked at the mere will and pleasure of B.

<sup>1</sup> See *Haji Syed v. Golab*, 20 All. 345=18 A. W. N. 68; *Kanlapat v. Ram Raj*, 79 I. C. 450.

<sup>2</sup> *Banee Madhub v. Joy Kishan*, 12 W. R. 495; *Brojonath v. Stewart*, 16 W. R. 216.

<sup>3</sup> *Safdar v. Deo Narain*, 16 W. R. 161.

<sup>4</sup> *Beniram v. Kundan*, 21 All. 496; *Muhammad Umardaras v. Maru*, 28 A. W. N. 282.

<sup>5</sup> See *Chotu v. Inayat-ul-lah*, 19 A. W. N. 191.

<sup>6</sup> *Ram Narayan v. Muh. Akbar*, 1923 A. I. R. All. 180=1923 R. C. 241=79 I. C. 508=VI U. D. (H. C.) 184=8 R D 82.

<sup>7</sup> 29 All. 135=3 A. L. J. 760=26 A. W. N. 306.

In *Muhammad Altaf Husain v. Mir*,<sup>1</sup> it was held that the purchaser of a house in an enclosure in the city of Meerut could repair or rebuild it though it had been in a dilapidated condition for ten years.

In *Jamna Kuer v. Abdul Nabi*,<sup>2</sup> it was held that in the case of a town, there is no presumption that occupiers of houses have no power to transfer the right to occupy the sites of their houses, and payment of a small ground rent is not inconsistent with the existence of a right to transfer the sites. But see *Genda Lal v. Muhammad Yunus*.<sup>3</sup>

It has been recently observed that: "The general rule in these provinces is that tenants in rural or agricultural villages are not entitled to transfer houses and the sites of houses but are entitled only to transfer the materials of which the houses are built whereas tenants in urban area are entitled to transfer the houses as they stand upon their sites and the rights of occupation therein. Thus tenants in urban areas have to all intents and purposes a proprietary right over the sites of their houses and the zamindar or the owner of the land is left only with a right of escheat in the case of abandonment or in the case of the decease of a tenant who leaves no heir to succeed him."<sup>4</sup>

Where a land lies in an urban area, which can not be characterised as an agricultural village, the holder of it is not necessarily in the same position as he would have been had the land been in an agricultural village. If such land was previously the site of factories and houses and lies in a *kasha* or town, and there is no evidence of the origin of possession of the last occupier's predecessor in title, there is no presumption that the original owner of the factories and houses started his occupation as a licensee or permissively from the zamindar.<sup>5</sup>

In *Abdul Haq v. Dati Lal*,<sup>6</sup> by an arrangement with the Government, the zamindars and certain butchers, an area of cultivated land adjoining the city of Allahabad was, about 50 years ago, let, in plots to the butchers for building purposes at a uniform rent of Rs. 10 per bigha with a condition against arbitrary enhancement. Subsequently the area was included in the Municipal limits of Allahabad and became *muhalla Atala*. It was held that the butchers were lessees and could transfer without reference to the zamindars.

The presumption that raiyats cannot transfer the sites of houses does not apply to towns.<sup>7</sup>

<sup>1</sup> 26 A. W. N. 179.

<sup>2</sup> 16 I. C. 353.

<sup>3</sup> II U. D. 706.

<sup>4</sup> *Misri Lal v. Durga Narain*, 1940 A. I. R. All. 317=1940 R. D. 213 (H. C.)

<sup>5</sup> *Amjad Ali v. Ghafnor Muhammad Khan*, 1934 A. L. J. 1247=1935 A. I. R. All. 76=XV U. D. (H. C.) 237=15 L. R. Rev. 552=4 A. W. R. 346=152 I. C. 25=1934 A. L. R. 979.

<sup>6</sup> 87 All. 144.

<sup>7</sup> *Govind Prasad v. Kundan*, 1924 A. I. R. All. 112=74 I. C. 760 (A.).

In *Bhagwandas v. Muhammad Yahia*,<sup>1</sup> the construction of a well inside the house of an inhabitant was held not to entitle the zamindar to an injunction to stop it. So in *Mahbub v. Sarju*.<sup>2</sup>

In *Incharam v. Bande Ali Khan*,<sup>3</sup> about two-thirds of the occupiers of the *abadi* of a village were non-agriculturists or not persons to be usually found in an ordinary agricultural village. An inn-keeper and tobacco-seller had been in possession of a house in the *abadi* for about 30 years. The origin of his possession was unknown. He had never paid any rent to the zamindar or acknowledged his title. It was held that though in an ordinary agricultural village, a tenant or other occupant of a site in the *abadi* asserting his title by adverse possession must have very strong evidence to support him, yet in a case like the present where a majority of the inhabitants were non-agriculturists, the Court may infer adverse possession from the circumstances mentioned above.

A person, who claims title to *abadi* land by adverse possession, must prove his adverse possession for 12 years, and cannot succeed on the ground that the zamindar has not proved his possession for 12 years.<sup>4</sup>

If it is pleaded that an agricultural village has ceased to be so, the burden of proving that fact lies on the person who says so, *i. e.*, he must show that there are so many persons in the village engaged in pursuing industries unconnected with agriculture and not subsidiary to agriculture, that the nature of the village has been changed and agriculture has no longer remained the principal source of livelihood in the village. It is not enough to show that there is a fair majority of persons who are not actually pursuing agriculture in the village or some people in the village are weavers.<sup>5</sup>

Whether co-sharers in a village are also co-sharers in *abadi* plots which have been included in Municipal limits is a question of fact. There is no presumption about it.<sup>6</sup>

5. **Purchase of share.**—When a person buys only a part of another person's share in a village, there is no presumption that he buys a corresponding share in the vendor's house in the village.<sup>7</sup> But when the whole share of a person is sold and nothing is reserved, then the presumption is that the house standing on his share is also sold.<sup>8</sup>

The matter came up for consideration before a *Full Bench*<sup>9</sup> of the High Court composed of five judges. It was held (Allsop, J. dissenting)

<sup>1</sup> 11 A. L. J. 301.

<sup>2</sup> 4 O. L. J. 454—42 I. C. 51.

<sup>3</sup> 33 All. 757.

<sup>4</sup> *Shambhu Nath v. Hari Ram*, 40 I. C. 97 (A).

<sup>5</sup> *Asimullah v. Phool Kunwar*, 1934 A. I. R. All. 361—17 B. D. 105—14 L. R. Rev. 85.

<sup>6</sup> *Gokul v. Sheonandan*, 15 L. R. Rev. 92.

<sup>7</sup> *Bachan Lal v. Gobardhan*, 1940 R. D. 13 (H. C.)

<sup>8</sup> *Balram Singh v. Ganga Singh* 13 O. L. J. 432; *Krishna Kumari v. Rajendra Bahadur*, 6 O. W. N. 1150.

<sup>9</sup> *Umrao Singh v. Kacharu Singh*, 1939 All. 607 (F. B.)—1939 A. I. R. All. 415—1939 A. L. J. 308—1939 R. D. 342.

that the residential house of a zamindar is a separate unit and in no sense a part and parcel of his proprietary right in the *mahal* and on the transfer of his proprietary interest in the *mahal* the residential house cannot unless specifically transferred pass to the transferee. It was further held that as to the site of the house the zamindar's proprietary right in it is in proportion to the share which he owns in the *mahal*.

#### B—WASTE LAND.

Zamindars are owners of waste land, and no tenant or other person has a right to trespass or encroach upon it, or build upon it.<sup>1</sup>

A zamindar may, however, permit anyone to use it.

An occupancy tenant is entitled to sink a well on *parti* land adjoining his holding if the construction does not cause any special damage to the zamindar.<sup>2</sup>

Should the permission be to break it up and bring it under cultivation, an agricultural tenancy will arise. Should the permission be to build, it will be either a contract or a license. It will be the former when leave is given for a consideration, *e. g.*, payment of rent, or becoming a tenant to some agricultural land, etc. The building will not be exposed to removal at the mere whim or pleasure of the zamindar. Breach of a term of the contract entailing forfeiture or termination of the agreement will have to be made out. For instance, a person who builds, on the understanding that he will be allowed to remain in occupation so long as he is a tenant of agricultural land, will not be ousted while that relation lasts. *A* is the zamindar of two adjacent villages *X* and *Y*. *B* is his occupancy tenant in *X* and holds some lands for cultivation in *Y*. *A* permits *B* to occupy some land in *Y* for a cattle-yard and shed. *B* gives up cultivation in *Y*. Unless it appears that occupation of the yard and shed in *Y* was a part of the contract of the tenancy in *X*, *B* is a mere licensee and can be ousted on revocation of the license.<sup>3</sup> Where a portion of waste land has for a great number of years been used by the tenants of village as a threshing-floor, the Court may, in the absence of evidence to the contrary, infer that the right to so use the plot was part of the contract of tenancy.<sup>4</sup> The same may be said of land used for grazing cattle. And as tenants must have some place to tether their

<sup>1</sup> *Chhatkun v. Ram Das*, 1929 A. I. R. All. 76=113 I. C. 756=X U. D. (H. C.) 110=10 L. R. Rev. 158=13 R. D. 222.

<sup>2</sup> *Kailash Chandra v. Ram Lal*, 1929 A. I. R. All. 544=115 I. C. 637 (A),=X U. D. (H. C.) 222=10 L. R. Rev. 280=13 R. D. 642.

<sup>3</sup> *Sundar Lal v. Chajju*, 21 A. W. N. 42.

<sup>4</sup> *Dalel v. Bhajju*, 16 All. 181=14 A. W. N. 15; *Jogeshwar Prasad v. Surajbali*, 47 All. 53=1925 A. I. R. All. 16=VI U. D. (H. C.) 249=10 Rev. and Cr. L. J. 299=5 L. R. Rev. 253=1924 R. C. 429=83 I. C. 249=9 R. D. 420; *Pati v. Har Dayal*, 7 L. R. Rev. 59=12 R. and Cr. L. J. 69=VII U. D. (H. C.) 53=1926 R. C. 72; *Bhagwan Rai v. Jaddu Rai*, 1926 A. I. R. All. 66=6 L. R. Rev. 184=VI U. D. (H. C.) 156=1925 R. C. 379=88 I. C. 746=9 R. D. 150. See *Shadilal v. Muhammad Ishaq Khan*, 33 All. 257=8 A. L. J. 10=9 I. C. 98.

oxen and other animals used for agricultural purposes, the same inference may be drawn in respect of a piece of land on which a tenant has for a number of years tethered his cattle without any objection and erected feeding and watering troughs,<sup>1</sup> and if the tenant builds a house on the plot for keeping his cattle, etc., the house cannot be demolished so long as he remains a tenant.<sup>2</sup> But the mere fact that the zamindar has allowed some part of the waste land to be used as a threshing-floor by a tenant or for the purpose of stocking manure or cowdung cakes will not make such user a term of the contract of tenancy. It is a mere license which may be revoked at any time,<sup>3</sup> and it would perhaps be unreasonable to infer a custom from it.<sup>4</sup> There must be other circumstances from which the incorporation of such a term might be inferred.

Non-agriculturists who stock refuse and sweepings on a piece of waste land for manure are entitled to them, the zamindar being entitled to rent for use and occupation.<sup>5</sup>

Planting by residents in the *abadi* of trees on vacant land near their houses cannot alone be any evidence of the establishment of exclusive possession of the vacant land against the other residents of the village.<sup>6</sup>

As to grazing rights in hills on partition, see *Bishun Singh v. Bisnu Dat.*<sup>7</sup>

The position of a licensee is, however, precarious. He must use the land strictly according to the terms of his licence, *e. g.*, he cannot erect a *chabutra* or mosque in a place in which he and his co-religionists are permitted to say their prayers.<sup>8</sup> The license is not transferable and is revoked by a transfer of the licensor's interest. But if it is to erect a work of a permanent character, and the licensee does so erect, the license is not revocable, *e. g.*, when a tenant in a zamindari has constructed a well of a permanent character and has incurred expense.<sup>9</sup>

### C—HAQ-I-CHAHARUM.

1. A customary right which is sometimes set up is *Haq-i-chaharum*. It literally means right to one-fourth and arises on transfer of building of tenants and entitles the landlord to one-fourth of the price. It has

<sup>1</sup> *Netram v. Tejram*, 11 A. L. J. 445 ; *Padarath v. Bas Singh*, 29 I. C. 264 (A).

<sup>2</sup> *Padarath Tewari v. Bas Singh*, 29 I. C. 264.

<sup>3</sup> *The Land Mortgage Bank of India v. Moti*, 8 All. 69—6 A. W. N. 3 ; *Gajadhar v. Bhiman*, 42 I. C. 896 (A).

<sup>4</sup> *Shadilal v. Muhammad Ishaq*, 33 All. 257—8 A. L. J. 10.

<sup>5</sup> *Jamna v. Lokman*, 11 U. D. 728.

<sup>6</sup> *Chari v. Ram Sewak*, 116 I. C. 816—13 B. D. 523.

<sup>7</sup> X U. D. 168.

<sup>8</sup> *Rahmat-ullah v. Badam*, 5 A. W. N. 325.

<sup>9</sup> *The Land Mortgage Bank v. Moti*, 8 All. 69—6 A. W. N. 3 ; *Nathu v. Tulsi Ram*, 10 Rev. and Cr. L. J. 135—1914 R. C. 48—VI U. D. (H. C.) 64—5 L. R. Rev. 98—9 B. D. 364.

been held not to be a cess.<sup>1</sup> (*Cf.* section 91 *ante*) A custom as to the right to the *Haq* should be proved. It must be proved to be immemorial, continued, undisputed<sup>2</sup> and well-known, before it can have the force of law. An entry in the *wajib-ul-arz* will be good evidence of its existence, but its silence does not necessarily disprove it.<sup>3</sup> It may be proved by other reliable evidence.<sup>4</sup>

It must be shown that at the time when the grant for the building purpose was made there was any practice of exacting *Haq-i-chaharum*. When a grant was made a long time ago and its nature is not known, the mere fact that the zamindar began in about 1922 to make grants of such a nature can hardly lead to the conclusion that grants of that nature had always been made.<sup>5</sup>

2. The right, where it is proved to exist, is usually confined to sales. It does not cover mortgages in the absence of a custom to that effect. Where a mortgage is by conditional sale, and it has been made absolute, does the right arise? In *Heera Ram v Deo Raj Narain*<sup>6</sup> the answer was given in the affirmative, but it appears from the judgment of the Full Bench that the Lower Courts had come to a finding that the custom extended to such a transaction.<sup>7</sup> The case therefore is not an authority on this point. The sale becomes absolute by order of a Court and not voluntarily. And the custom does not extend to compulsory transfers, such as sales in execution of decrees,<sup>8</sup> or to compensation paid under the Land Acquisition Act.<sup>9</sup> It may, however, be proved that the right extends to all transfers, voluntary or otherwise. Where the *wajib-ul-arz* is relied upon as such proof, its terms must clearly show that the right extends to compulsory or involuntary sales. The mere fact that it refers to "sale" does not mean that it embraces compulsory sales.<sup>13</sup> Where the right is sought to be established by any other evidence, it must be strong, reliable and sufficient to prove a custom.<sup>11</sup> A decree or two with or without the statements of some witnesses is not necessarily evidence of this description, but its character may make it so.

<sup>1</sup> *Bhagwati Prasad v. Gajadher*, 13 A. W. N. 207.

<sup>2</sup> *Lachman v. Sheobalak*, 4 A. W. N. 151.

<sup>3</sup> *Sri Lal v. Kesho Das*, 6 L. R. Rev. 93—VI U. D. (H. C.) 433—1925 R. O. 268—9 R. D. 284.

<sup>4</sup> See *Asghar Ali v. Ram Gulam*, 1 A. W. N. 137; *Radhey Shyam v. Nasir Husain*, 1941 R. D. 469 (H. C.)

<sup>5</sup> *Ramai v. Ram Datta*, 1940 A. L. J. 267—1940 R. D. 210.

<sup>6</sup> 1866—67 N. W. P. 66—Agra F. B. 63.

<sup>7</sup> At p. 67.

<sup>8</sup> *Kalian v. Bhagirathi*, 6 All. 47—3 A. W. N. 198; *Beni Madho v. Zahurul-Haq*, 3 All. 797—1 A. W. N. 72; *Gopal v. Fazal*, 1 A. W. N. 165. But see *Radhey Shyam v. Nasir Husain*, 1941 R. D. 469 (H. C.)

<sup>9</sup> *Muhammad Abbas v. Jewat*, 23 A. W. N. 5.

<sup>10</sup> *Gopal v. Fazal*, 1 A. W. N. 156; *Kalian v. Bhagirathi*, 6 All. 47—3 A. W. N. 198.

<sup>11</sup> *Lachman v. Sheobalak*, 4 A. W. N. 151.

A learned single judge has recently held that there is no difference in principle between a private sale and an auction sale and the custom of *Haq-i-chaharum* applies to auction sales as well as to private sales.<sup>1</sup>

3. The right is to one-fourth of the sale-price, but where a *wajib-ul-arz* stated that *chaharum* was received by the zamindars "according to the understanding arrived at between the seller and the zamindar," it was held that the right did not necessarily extend to one-fourth of the price,<sup>2</sup> the ratio depending on the understanding referred to.

A *kabuliat* contained the following covenant:—"At the time of the sale or of any other transfer or of destruction of the *amla* we shall pay *haq-i-chaharum* to the zamindar." Held, that the word *amla* meant not the materials of the house but the building on the site.<sup>3</sup>

Where the right arises on a mortgage by conditional sale becoming absolute, the one-fourth is calculated on the sum secured by payment of which the property would be discharged, i. e., the principal sum, and any interest which, according to the contract, is due at the date of foreclosure. If no interest is stipulated for—the mortgagor covenanting to put the mortgagee in possession in lieu of interest—and the Court awards damages in lieu of interest owing to non-delivery of possession to the mortgagee, the price will be the principal sum secured and not that sum plus the damages awarded.<sup>4</sup> This sum will not be reduced because the mortgagor and the mortgagee have, after foreclosure, sold the building mortgaged privately for a less sum.<sup>5</sup> Even when the zamindar has received *chaharum* on the less sum, he can sue for the difference between the sum legally due and that received.

4. Whether the claim to the fourth may be made as against the vendee, the vendor, or both, depends on the terms of the custom. When it is not confined to the seller, it may be enforced as against the vendee also,<sup>6</sup> as the zamindar's right is to a share of the purchase-money and it is not merely a right to claim from the vendor.<sup>7</sup> The right to *haq-i-chaharum* can be enforced against the vendee.<sup>8</sup> The vendee cannot get rid of his liability by proving that he paid the whole of the purchase-money to the vendor, as it was his duty to see that the zamindar received his proper share of the price.<sup>9</sup> The decree should be a joint one against

<sup>1</sup> *Radhey Shyam v. Nasir Husain*, 1941 A. L. J. 43—1941 R. D. 469 (H. C.)

<sup>2</sup> *Beni Madho v. Zahurul Haq*, 3 All. 797—7 A. W. N. 72.

<sup>3</sup> *Ramdas v. Jamal-ud-din Ahmad*, 6 I. C. 399.

<sup>4</sup> *Heera Ram v. Deo Narain*, Agra, F. R. 63, at p. 68.

<sup>5</sup> *Ib.*

<sup>6</sup> *Dhandai v. Abdul Rahman*, 23 All. 209—21 A. W. N. 61. This shakes the authority of *Aaghar Ali v. Ram Gholam*, 1 A. W. N. 137.

<sup>7</sup> *Heera Ram v. Deo Narain*, Agra, F. B. 63; *Parbhoo Narain Singh v. Ramsan*, 41 A. 417—17 A. L. J. 469 dissented from in *Haji Abdul Shakur v. Nond Lal*, 53 All. 742—1931 A. I. R. All. 552—1931 A. L. J. 429—15 R. D. 447.

<sup>8</sup> *Radhey Shyam v. Nasir Husain*, 1941 A. L. J. 43—1941 R. D. 469 (H. C.).

<sup>9</sup> *Heera Ram v. Deo Narain*, Agra F. B. 63 (at p. 69); *Kolar Vath v. Datta Prasad Singh*, 44 A. 739—20 A. L. J. 646—V U. D. (H. C.) 71—1922 R. C. 317—7 R. D. 156.



the seller and buyer, leaving the latter to enforce his right of reimbursement, if any, as against the former.<sup>1</sup> When the custom limits the right as against the seller only, the purchaser cannot, in the absence of a contract rendering him liable, be called upon to pay; and a decree-holder in execution of whose decree a sale takes place cannot be said to be the seller.<sup>2</sup>

When the right to *haq-i-chaharum* arises from a contract between the tenant and the proprietor, and a lien arises by virtue of it, the vendee is not bound.<sup>3</sup>

#### D—Miscellaneous.

A zamindar cannot levy any contributions for *holi* and *dewali* unless a definite custom to that effect be proved.<sup>4</sup>

He can levy a customary fee on the marriage of a daughter (or *bau*), if the custom is proved, *e. g.*, by entry in the *wajib-ul-arz*.<sup>5</sup>

<sup>1</sup> *Id.*

<sup>2</sup> *Beni Madho v. Asghar Ali*, 3 All. 797—1 A. W. N. 72.

<sup>3</sup> *Rajeshwari Swami Jungum v. Baharilal*, II U. D. 735; *Abdus Shakur v. Munshi Nand Lal*, 53 All. 742—1931 A. L. J. 429—12 L. R. Rev. 226—XII U. D. (H C) 109—15 R. D. 447.

<sup>4</sup> *Jangi v. Mewa Lal*, 1931 A. L. J. 79—1931 A. I. R. All. 215—15 R. D. 338.

<sup>5</sup> *Chunni v. Rafi-un-nissa*, XII U. D. (H. C.) 108—12 L. R. Rev. 221—15 R. D. 439.

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